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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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, June 14, 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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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2011–0007]

RIN 3150–AI90

List of Approved Spent Fuel Storage Casks: HI–STORM Flood/Wind Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of June 13, 2011, for the direct final rule that was published in the **Federal Register** on March 28, 2011 (76 FR 17019). This direct final rule amended the NRC's spent fuel storage regulations to add the Holtec HI–STORM Flood/Wind cask system to the "List of Approved Spent Fuel Storage Casks" as Certificate of Compliance Number 1032.

DATES: *Effective Date:* The effective date of June 13, 2011, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Gregory Trussell, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–6445, e-mail: *Gregory.Trussell@nrc.gov.*

SUPPLEMENTARY INFORMATION: On March 28, 2011 (76 FR 17019), the NRC published a direct final rule amending its regulations at Title 10 of the Code of Federal Regulations Section 72.214 to add the Holtec HI–STORM Flood/Wind cask system to the "List of Approved Spent Fuel Storage Casks" as Certificate of Compliance Number 1032. In the direct final rule, the NRC stated that if no significant adverse comments were received, the direct final rule would become final on June 13, 2011. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 3rd day of June, 2011.

For the Nuclear Regulatory Commission.

Leslie S. Terry,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–14061 Filed 6–7–11; 8:45 am]

BILLING CODE 7590–01–P

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12 CFR Part 914

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12 CFR Part 1235

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1732

RIN 2590–AA10

Record Retention for Regulated Entities and Office of Finance

AGENCY: Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Final regulation.

SUMMARY: The Federal Housing Finance Agency is issuing a final regulation to set forth record retention requirements for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, and the Office of Finance.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Andra Grossman, Senior Counsel, telephone (202) 343–1313 (not a toll-free number); Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended (Safety and Soundness Act) provides that the Director is to establish standards for the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks (collectively "regulated entities") and the Office of Finance to maintain adequate records in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of each regulated entity and the Office of Finance and such other operational and management standards as the Director determines to be appropriate.[1] The Safety and Soundness Act further provides the Director with general supervisory and regulatory authority over the regulated entities and the Office of Finance, and requires the Director to ensure that they operate in a safe and sound manner and in compliance with applicable laws, regulations, and supervisory guidance and directives.[2]

II. Discussion of Comments

On August 4, 2009, the Federal Housing Finance Agency (FHFA) published for comment a proposed regulation setting forth proposed requirements for the regulated entities and the Office of Finance to establish and maintain a record retention program to ensure that records are readily accessible for examination and other supervisory purposes.[3] FHFA received comments from the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, ten Federal Home Loan Banks, the Office of Finance, and ARMA International, a professional association of record and information managers. All comments are posted to the FHFA Web site at *http://www.fhfa.gov* and have been

[1] 12 U.S.C. 4513b(a)(10) and (11).

[2] 12 U.S.C. 4511(b) and 4513(a).

[3] 74 FR 38559.

taken into consideration in issuing the final regulation.

A discussion of the comments as they relate to the sections of the final regulation follows.

Section 1235.1 Purpose and Scope

This section provides that the purpose of the proposed regulation is to set forth minimum requirements for a record retention program for each regulated entity and the Office of Finance. The proposed requirements are intended to ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible by FHFA.

One commenter requested that FHFA clarify whether the regulation is intended to apply on a prospective or retroactive basis to existing records of a Federal Home Loan Bank. FHFA clarifies that the minimum requirements of the record retention program are applicable prospectively to regulated entities and the Office of Finance. FHFA notes that the Federal Home Loan Banks were subject to FHFB Resolution 93–50 "Approval of the Policy Statement on Retention of Records" (May 26, 1993) (Resolution) issued by the Federal Housing Finance Board, a predecessor agency of FHFA, which discussed the objectives of the policy, the retention periods of Federal Home Loan Bank documents, and the availability of such documents, and attached a record retention schedule. (See the discussion below on the rescission of the Resolution.) Consequently, establishing a record retention program that meets the minimum requirements of the regulation should not create a significant burden on any Federal Home Loan Bank.

In reviewing the proposed Purpose and Scope section, FHFA has determined to include the express purpose of furthering prudent management within the scope of the final regulation, which was implied in the proposed regulation.

Section 1235.2 Definitions

Active, inactive, and vital records. The proposed regulation provides definitions for "active," "inactive," and "vital" records. Several commenters requested that the definitions of the terms "active record," "inactive record," and "vital record" be removed from the regulation. One commenter pointed out that the terms are not used in other parts of the regulation. Another commenter suggested providing a period of time a record is active, such as to the end of the last year in which the matter is active or as long as property is owned. In addition, a commenter suggested that the definition of "inactive record" and "vital record" include a clearly defined retention period consistent with the organization's record retention schedule.

FHFA has determined to remove the definitions of the terms "active record," "inactive record," and "vital record" as requested by several commenters because such terms are not used in the proposed regulation. FHFA notes, however, that a regulated entity and the Office of Finance must have a record retention period that pertains to all records regardless whether a record is active, inactive, or vital. FHFA will evaluate the reasonableness of the record retention period established by each regulated entity and the Office of Finance.

Electronic Record. The proposed regulation defines the term "electronic record" as "a record created, generated, communicated, or stored by electronic means." One commenter suggested clarifying the terms "created" and "generated" within the definition because such terms appear to be synonymous. FHFA is adopting the definition as proposed because the definition is a widely-used, generally accepted definition of the term electronic record.

E-mail. One commenter recommended revising the definition of the term "e-mail" to include reference to computers or computer networks. FHFA has revised the definition to clarify that the term "e-mail" means a document created or received on a computer network for transmitting messages electronically, and any attachment transmitted with the document.

Record. The proposed regulation defines "record" as any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance or employee, maintained in connection with a regulated entity or Office of Finance business (which business, in the case of the Office of Finance, includes any functions performed with respect to the Financing Corporation), regardless of the following—(1) Form or format, including hard copy documents (*e.g.,* files, logs, and reports) and electronic documents (*e.g.,* e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD–ROMS, and DVDs), and voicemail records; (2) where the information is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility; (3) whether the information is maintained or used on regulated entity-owned or Office of Finance equipment, or on personal or home computer systems of an employee; or (4) whether the information is active or inactive.

One commenter suggested that FHFA revise the definition of the term "record" to include regulatory requirements as well as business needs. FHFA notes that records needed for the business of the regulated entities and the Office of Finance include records to meet regulatory requirements, but has determined to include an express reference to regulatory requirements for greater clarity.

Several Federal Home Loan Banks suggested the deletion of the term "voice mail" from the example of the form or format of a record. These commenters stated that as a matter of course, business is not conducted over voicemail such that a voicemail would not need to be maintained as a record. They suggested that recorded telephone lines that document formal communications and business transactions are the more appropriate form of documented telephone related communications. In response to this suggestion, FHFA has included the term "recorded telephone line records" in the description of form and format of a record but has not deleted the term "voicemail records" because some regulated entities or the Office of Finance may now or in the future use "voicemail records" in the transaction of business. If a regulated entity or the Office of Finance does not use voicemail records for business purposes and such records are not identified in its record retention policy as a category of records that represent business records, the voicemail records would not be records for purposes of the regulation.

One commenter suggested that the definition of the term "record" should apply only to business records and not to personal records, public periodicals, and similar documents that would be burdensome to catalog. In addition, the commenter requested that confidential and privileged records be exempt from the requirements of the regulation. FHFA notes that under the Safety and Soundness Act and the Federal Home Loan Bank Act, the Director may require the production of records, whether confidential or privileged; therefore, confidential or privileged records are not exempt from the requirements of the regulation. In addition, it is a prudent management practice for confidential and privileged records to be retained. To clarify the definition of the term "record," FHFA has revised the definition to apply to records related to

the conduct of the business of a regulated entity.

Two commenters suggested the removal of the reference to personal or home computers. A regulated entity or the Office of Finance may maintain a record for purposes of this regulation solely on equipment it owns, as one commenter stated, even if employees access and use records on their home computers. Each regulated entity and the Office of Finance is required to maintain a record, in at least one form or format, regardless of where the record is created, used, or maintained, and may prohibit the transfer of business records to personal or home computers. If business records are transferred to personal or home computers, then such records would be records for purposes of the regulation. Consequently, FHFA has determined not to delete the reference to personal or home computers.

One commenter sought clarification on the required form or format of a record; others sought clarification as to the required type and number of records that must be maintained. Another commenter sought clarification with regard to the destruction of drafts of records not subject to a record hold.

In response to these comments, FHFA notes that a regulated entity or the Office of Finance may maintain only one copy of a record if the record is not subject to a record hold, there is no mandatory legal requirement to retain the record in the form or format, and another form or format of the record is not necessary to support administrative, business, external audit, or internal audit functions or litigation. Copies may be destroyed in accordance with the record retention schedule of the regulated entity or Office of Finance. In addition, FHFA notes that a record retention schedule should specifically address those records for which original signature documents will be maintained in electronic copy with the understanding that electronic copies of physical documents may face challenges as to authenticity and admissibility in court if the actual original signature is no longer available.

One commenter requested that FHFA clarify that, unless subject to a record hold, transitory documents such as "to do" lists, unsolicited information, advertisements, and other similar documents would not be considered records. For purposes of this regulation, the permanent or transitory nature of a document does not determine whether it is a record. If a document is considered a record for purposes of this regulation, it must be retained in accordance with the record retention schedule of the regulated entity or Office of Finance. That schedule may establish a category of transitory documents with a short or no-retention period in accordance with the record retention program of the regulated entity or Office of Finance.

Record Hold. The proposed regulation defines "record hold" as a requirement, an order, or a directive from a regulated entity, the Office of Finance, or FHFA that the regulated entity or the Office of Finance is to retain records relating to a particular issue in connection with an actual or a potential FHFA examination, investigation, enforcement proceeding, or litigation of which the regulated entity or the Office of Finance has received notice from FHFA. One commenter requested that the definition of the term "record hold" be modified since the occurrence of an FHFA examination should not trigger the formal record hold process. FHFA notes that the occurrence of an FHFA examination does not automatically trigger a record hold; FHFA must provide notice of the record hold.

As a matter of prudent management, regulated entities and the Office of Finance should have a record hold program with respect to anticipated litigation regardless of notice from FHFA. Consequently, FHFA has clarified the definition of the term "record hold" to include litigation of which the regulated entity or the Office of Finance becomes aware.

Record Retention Schedule. The proposed regulation defines the term "record retention schedule" as "a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category. Reproductions are also included for each record category if the original of the official record is not available."

One commenter requested that the definition of the term "record retention schedule" be revised to cover only the information media that the regulated entity has determined to be the form in which it will retain a particular record in order to avoid maintaining duplicate records. As explained above in the discussion of the definition of the term "record," a regulated entity may maintain only one copy of a record unless a record is subject to a record hold, there is a mandatory legal requirement to retain the record in another format, or a duplicate record is necessary to support administrative, business, external audit, or internal audit functions or litigation. For clarity, FHFA has deleted from the final regulation the sentence, "[r]eproductions are also included for each record category if the original of the official record is not available."

Another commenter suggested revising the definition of the term "record retention schedule" by striking "is required to retain" and inserting "retains" to clarify that many records retained by a regulated entity are kept for discretionary business reasons, not because a legal requirement forces retention. FHFA has determined that because a requirement to retain records may be based on a legal requirement or internal policy, it is not necessary to revise the definition as suggested.

Finally, one commenter recommended including in the definition of the term "record retention schedule" that the record retention schedule must define the policies and procedures to be followed relative to access, safeguards, dispositions, and record holds. FHFA notes that although the record retention program should address such policies and procedures, they do not need to be addressed in the record retention schedule.

Retention Period. The proposed regulation defines "retention period" as "the length of time that records must be kept before they are destroyed. Records not authorized for destruction have a retention period of 'permanent.'" One commenter recommended adding the clarifying phrase "as determined by the organization's record retention schedule." FHFA agrees with the recommendation and has modified the definition accordingly.

Another commenter suggested revising the definition of the term "retention period" by striking "must be kept" and inserting "are kept" to clarify that many records retained by a regulated entity are kept for discretionary business reasons, not because a legal requirement forces retention. As noted above, FHFA has determined that because a requirement to retain records for a certain period may be based on a legal requirement or internal policy, it is not necessary to revise the definition as suggested.

Finally, after reviewing the proposed definitions, FHFA determined that the definition of the term "employee" in § 1235.2 needed a technical correction and has made the correction by deleting the reference to employees of a conservator.

Section 1235.3 Establishment and Evaluation of a Record Retention Program

As proposed, a regulated entity and the Office of Finance must provide a copy of its record retention program within 120 days of the effective date of the regulation. Several commenters questioned the length of time given to create a program and requested several alternatives. In consideration of the requests, FHFA has changed the requirement to produce a record retention program to within 180 days of the effective date of the regulation. This timeframe applies to the submission of a record retention program, including projected milestones, and does not apply to the implementation of the program. Those regulated entities currently submitting an annual record retention program also must comply with the time requirements of this regulation.

One commenter asked whether a copy of the record retention program should also be submitted to the examiner-in-charge of a regulated entity. FHFA notes that a regulated entity or the Office of Finance is not required to provide a copy of its record retention program to the examiner-in-charge unless he or she requests a copy.

The proposed regulation provides that management of each regulated entity and the Office of Finance is to evaluate in writing the adequacy and effectiveness of its record retention program. One commenter asked whether management may rely on an audit conducted by an internal or external auditor. FHFA clarifies that an auditor may provide information to be taken into account by a regulated entity or the Office of Finance, but an auditor's opinion may not replace management's evaluation.

Two commenters asked FHFA to provide the form and content of management's evaluation of a record retention program. One commenter requested that FHFA provide for appropriate qualifications on management's evaluation of its record retention program in that it will not be able to test each employee's compliance as a practical matter and so will have to rely on the assertions of each employee as to such employee's compliance. Another commenter recommended that FHFA require that the record retention program be audited at least annually, rather than be evaluated every three years, as set forth in the section.

In response to these comments, FHFA notes that it will rely on each regulated entity and the Office of Finance to determine the appropriate form and content of the evaluation, which is subject to review by FHFA examiners. FHFA notes that the scope, expense, and evaluation of a record retention program should be reasonable in light of the size, complexity, and structure of the regulated entity or the Office of Finance. With respect to the evaluation of the record retention program, considering the importance of a record retention program and the recommendation for an annual evaluation, FHFA has determined to require an evaluation every two years rather than every three years.

Section 1235.4 Minimum Requirements of a Record Retention Program

Section 1235.4 of the proposed regulation provides minimum requirements of a record retention program. One commenter recommended that FHFA requirements be labeled as "elements" of a record retention program and instead include a list of general principles. FHFA has considered the recommendation and has determined not to restructure the minimum requirements, which encompass general principles. The purpose of the regulation, set forth in § 1235.1, and the principle underlying a record retention program of a regulated entity and the Office of Finance is that the records be complete and accurate and readily accessible by FHFA.

One commenter suggested adding a requirement to audit the record retention program at least annually, and to include in the program a means of detecting any internal or external risks to the integrity of a record retention schedule, and the safeguarding and disposal of records. FHFA is not adding an audit requirement because it is more appropriate for the internal and external audit functions of the regulated entity and the Office of Finance to determine the frequency and scope of audits of the record retention program. Such determinations are reviewable by FHFA examiners. However, FHFA is adding a clarifying minimal requirement that the record retention program must provide for periodic testing of the ability to access records.

Two commenters sought clarification of the term "existing information technology" used in proposed § 1235.4(a)(2)(iii) and questioned whether FHFA requires upgrades to technology. Records must be accessible. If a record is stored in an electronic format that is no longer accessible with existing information technology of a regulated entity or the Office of Finance, the record must be converted into a format that is accessible. Recognizing that each regulated entity and the Office of Finance may have a different information technology infrastructure, FHFA is not requiring that a specific type of information technology be used. Nevertheless, FHFA is deleting proposed § 1235.4(a)(2)(iii) because it is duplicative of § 1235.6, and is adding clarifying language in § 1235.4(b) to address the minimum storage requirements for electronic records; that is, they must be maintained on immutable, non-rewritable storage, preferably searchable, in a manner that provides for access to and accurate reproduction of such records for later reference by transmission, printing, or other means.

One commenter asked that the final regulation clarify that the record retention program may specify which kinds of agents and independent contractors should be subjected to the record retention program and how often training will be provided to those agents and independent contractors. FHFA notes that it would be appropriate for the record retention program to address those matters. The commenter also asked FHFA to clarify whether existing contracts must be modified to inform agents and independent contractors of the record retention program. FHFA is not requiring that existing contracts be modified.

Several commenters suggested clarification that a record retention program must account for the proper disposition of records. FHFA agrees and has added clarifying language to § 1235.4.

Lastly, two commenters requested that FHFA clarify that manual controls are appropriate so long as they are shown to be effective and that the regulation does not require a regulated entity or the Office of Finance to purchase expensive records management software and utilize costly consultants and vendors to advise on the additions of systems that may offer no more protection than the record management system currently in place. FHFA notes that the regulation does not require records management software be purchased or that consultants be utilized. The regulation requires that the record retention program meet the minimum requirements of § 1235.4, provide for record holds under § 1235.5 and access to records under § 1235.6, and be evaluated under § 1235.3.

In addition to the clarifying revisions discussed above, the final § 1235.4 includes clarifying language as follows. As proposed, § 1235.4(a)(3) provides that one of the minimum requirements of a record retention program is that it assign in writing the authorities and

responsibilities for record retention activities. That section has been clarified to provide expressly that the authorities and responsibilities for record retention activities of employees, line managers, and corporate management must be assigned. As proposed, § 1235.4(a)(4) provides the record retention program include policies and procedures concerning record holds. It has been clarified to provide expressly that such policies and procedures must be integrated, as appropriate, with other policies and procedures throughout the organization. Finally, proposed § 1235.4(b), redesignated as § 1235.4(c) of the final regulation, has been clarified to address specifically communication of the record retention program.

Section 1235.5 Record Hold

Section 1235.5 of the proposed regulation requires that the record retention program of a regulated entity and the Office of Finance address how employees and, as appropriate, how agents or independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold. It also would provide that any employee and, as appropriate, any agent or independent contractor who has received notice of a potential investigation, enforcement proceeding, or litigation by FHFA involving the regulated entity or the Office of Finance or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding, or litigation, notify immediately the legal department or senior management of the regulated entity or the Office of Finance of a record hold.

Two commenters sought clarification as to how a record hold notice will be provided by FHFA and requested that notice be given to the chief executive officer and general counsel to ensure that the record hold notice is promptly disseminated to the appropriate persons. In response to this comment, FHFA has added a new paragraph (a) in the final regulation, which clarifies that FHFA will notify the chief executive officer of the record hold.

With respect to notice to independent contractors or agents, one commenter asked FHFA to clarify that although regulated entities and the Office of Finance may be required to notify independent contractors, they cannot accept legal or regulatory responsibility for the actions or inactions of independent contractors. FHFA notes that proposed § 1235.5(a)(1) requires that the record retention program address only how independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold.

Another commenter asked how the obligation to notify certain agents and independent contractors of a record hold in proposed § 1235.5(a)(1) relates to other obligations a regulated entity or the Office of Finance may have to ensure the confidentiality of FHFA materials, such as under 12 CFR 911.3. FHFA sees no conflict between the obligation to notify certain agents and independent contractors to retain specific records without disclosing that FHFA required the record hold or the obligation of a regulated entity or the Office of Finance not to disclose unpublished FHFA information without written authorization.

Two other commenters sought confirmation that a regulated entity is not required to have a legal department in light of the provision in proposed § 1235.5(a)(3) that employees notify the legal department of a potential investigation, enforcement proceeding, or litigation by FHFA. In response to these commenters, § 1235.5(a)(3), redesignated as § 1235.5(b)(3) in the final regulation, has been revised to provide that employees must notify the legal department or the individual providing legal services to the regulated entity or the Office of Finance as well as to senior management.

Section 1235.5(b) of the proposed regulation, redesignated as § 1235.5(c) in the final regulation, requires that the record retention program of each regulated entity and the Office of Finance address the method for retaining records during a record hold, including a description of the method for the continued preservation of electronic records, including e-mail, and the conversion of records from paper to electronic form as well as any alternative storage method. One commenter requested clarification that a regulated entity or the Office of Finance is not required to convert records from paper to electronic format. FHFA clarifies that electronic conversion is not required and has added the phrase "as applicable" in connection with the conversion of records from paper to electronic form and alternate storage methods. Although electronic conversion is not required, FHFA notes in § 1235.5(d) of the final regulation that a record retention program must ensure access to and retrieval of records by the regulated entity and the Office of Finance, and access, upon request, by FHFA, during a record hold. Such access must be by reasonable means, consistent with the nature and availability of the records and existing information technology.

Section 1235.6 Access to Records

Section 1235.6(a) of the proposed regulation provides that each regulated entity or the Office of Finance make its records readily available for inspection and other supervisory purposes within a reasonable period upon request by FHFA, at a location acceptable to FHFA, and by reasonable means, consistent with the nature and availability of the records and existing information technology. As proposed, § 1235.6(b) would provide that a reasonable period for requests for records made during the course of an on-site examination and pursuant to the examination's scope is no longer than one business day. For requests for records made outside of an on-site examination, a reasonable period would be three business days.

Several commenters requested either clarification or deletion of the requirement to produce records within a reasonable period. Some recommended deleting the one- and three-day presumption, but retaining the reasonable period requirement. Others requested a longer period of time in which to provide access to FHFA, that the presumptive time-periods could be rebutted, or that FHFA should take into consideration the location of the records in determining what time-period is reasonable.

Taking the comments into consideration, FHFA has revised § 1235.6 by deleting the presumptive time periods and the reference to a reasonable time period and has added that records are to be made available promptly upon request by FHFA. Facts and circumstances that FHFA will consider in determining whether records are made promptly available include, but are not limited to, the time-sensitivity of the request, whether the request is made pursuant to an examination or other supervisory activity, and the format, volume and the location of the records.

Section 1235.7 Supervisory Action

Section 1235.7 of the proposed regulation provides that failure by a regulated entity or the Office of Finance to comply with the regulation may subject the regulated entity or the Office of Finance or their board members, officers, or employees to supervisory action by FHFA under the Safety and Soundness Act. One commenter recommended the removal of the imposition of supervisory action on

board members, officers, and employees in the absence of willful and wrongful conduct. The commenters are of the view that there should be no individual liability. After considering the comment, FHFA has determined, consistent with its statutory enforcement authority, to adopt the proposed section without change.

Discussion of FHFB Resolution 93–50

FHFB Resolution 93–50 "Approval of the Policy Statement on Retention of Records" (May 26, 1993) (Resolution) issued by the Federal Housing Finance Board, a predecessor agency of FHFA, discussed the objectives of the policy, the retention periods of Federal Home Loan Bank documents, and the availability of such documents and attached a record retention schedule. One commenter asked whether the Resolution survives after the regulation becomes final; another commenter recommended that the regulation expressly rescind the Resolution. FHFA clarifies that the Resolution is terminated on the effective date of the Record Retention regulation.[4] FHFA notes that it may issue advisory or supervisory guidance on the implementation of the final Record Retention regulation.

III. Final Regulation

Section 1313(f) of the Safety and Soundness Act (12 U.S.C. 4513(f)), requires the Director, when promulgating regulations relating to the Federal Home Loan Banks, to consider the differences between the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises) and the Federal Home Loan Banks with respect to the Federal Home Loan Banks' cooperative ownership structure, liquidity mission, affordable housing and community development mission, capital structure, and joint and several liability. The Director may also consider any other differences that are deemed appropriate.

In preparing the final regulation, the Director considered the differences between the Federal Home Loan Banks and the Enterprises as they relate to the above factors. The Director believes that none of the unique factors relating to the Federal Home Loan Banks warrants establishing different treatment under the final regulation. The regulation speaks at a high level and permits a regulated entity and the Office of Finance to adopt a records retention policy that is appropriate to its own size, complexity, and business activities.

The final regulation requires the regulated entities and the Office of Finance to establish and maintain a record retention program to ensure that records are readily accessible for examination and other supervisory purposes. FHFA recognizes that the effectiveness of the examination process is dependent upon the prompt production of complete and accurate records. FHFA, through the supervisory process, must have access to the records of a regulated entity and the Office of Finance so as to be able to determine the financial condition of the regulated entity and the Office of Finance, assess the details or the purpose of any transaction that may have a material effect on the financial condition of the regulated entity and the Office of Finance, evaluate the entity's compliance with applicable laws, regulations, and supervisory guidance and directives, or otherwise fulfill the mission of FHFA.

Retention of such records not only facilitates the examination process, but also allows a regulated entity and the Office of Finance to manage more effectively its business and detect improper behavior that might cause financial damage. Additionally, such records serve as documentation for a regulated entity and the Office of Finance in any controversy over its business activities or transactions.

The importance of sound record retention policies and procedures by regulated institutions also has been recognized by Congress and other federal regulators. Adequate record retention by institutions has been determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, and has been identified as a requisite component of an institution's operation and management on a safety and soundness basis.[5]

In addition to facilitating the oversight and enforcement of federal banking laws, adequate record retention has been recognized by Congress as being essential to the oversight and enforcement of the federal securities laws. For example, as mandated by the Sarbanes-Oxley Act, the U.S. Securities and Exchange Commission adopted rules requiring accounting firms to retain for seven years certain records relevant to their audits and reviews of issuers' financial statements.[6] Records to be retained include an accounting firm's workpapers and certain other documents that contain conclusions, opinions, analyses, or financial data related to the audit or review.[7]

The final regulation is not intended to have an effect on the policies, rules, or guidance of other federal agencies that may require record retention terms or practices different from those set forth in this regulation.

FHFA is issuing the final regulation as proposed with the clarifying revisions and technical correction discussed above. On the effective date of this regulation, the regulations at 12 CFR 914.3 (access to books and records) and 12 CFR part 1732 (record retention) are removed and FHFB Resolution 93–50, dated May 26, 1993, is terminated.

IV. Regulatory Impact

Paperwork Reduction Act

The final regulation does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the regulation under the Regulatory Flexibility Act. FHFA certifies that the regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable to only the regulated entities and the Office of Finance, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 914

Federal home loan banks, Reporting and recordkeeping requirements.

[4] Resolutions of the Federal Housing Finance Board, such as FHFB Resolution 93–50, remain in effect until modified, terminated, set aside, or superseded by the FHFA Director. Sec. 1312(a) of the Housing and Economic Recovery Act of 2008.

[5] 12 U.S.C. 4513b(a)(10) and 4514(c). *See also* 12 U.S.C. 1829b.

[6] Public Law 107–204, 116 Stat. 745 (2002).

[7] 17 CFR part 210.

12 CFR Part 1235

Federal home loan banks, Government-sponsored enterprises, Records, Reporting and recordkeeping requirements.

12 CFR Part 1732

Government-sponsored enterprises, Records, Reporting and recordkeeping requirements.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under the authority of 12 U.S.C. 4513b, FHFA amends Chapters IX, XII and XVII of title 12 of the Code of Federal Regulations, as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 914—DATA AVAILABILITY AND REPORTING

■ 1. The authority citation for 12 CFR part 914 is revised to read as follows:

Authority: 12 U.S.C. 1440 and 4526.

§ 914.3 [Removed and reserved]

■ 2. Remove and reserve § 914.3.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

SUBCHAPTER B—ENTITY REGULATIONS

■ 3. Add part 1235 to subchapter B to read as follows:

PART 1235—RECORD RETENTION FOR REGULATED ENTITIES AND OFFICE OF FINANCE

Sec.

Authority: 12 U.S.C. 4511(b), 4513(a), 4513b(a)(10) and (11), 4526.

§ 1235.1 Purpose and scope.

The purpose of this part is to set forth minimum requirements for a record retention program for each regulated entity and the Office of Finance. The requirements are intended to further prudent management as well as to ensure that complete and accurate records of each regulated entity and the Office of Finance are readily accessible to FHFA.

§ 1235.2 Definitions.

For purposes of this part, the term—

Director means the Director of FHFA, or his or her designee.

Electronic record means a record created, generated, communicated, or stored by electronic means.

E-mail means a document created or received on a computer network for transmitting messages electronically, and any attachments which may be transmitted with the document.

Employee means any officer or employee of a regulated entity or the Office of Finance.

Federal Home Loan Bank means a Bank established under the Federal Home Loan Bank Act; the term "Federal Home Loan Banks" means, collectively, all the Federal Home Loan Banks.

FHFA means the Federal Housing Finance Agency.

Financing Corporation means the entity established by the Competitive Equality Banking Act of 1987, as a mixed-ownership government corporation whose purpose is to function as a financing vehicle for the Federal Savings & Loan Insurance Corporation. The Financing Corporation has a board of directors consisting of the managing director of the Office of Finance and two Federal Home Loan Bank presidents.

Office of Finance means the Office of Finance of the Federal Home Loan Bank System.

Record means any information, whether generated internally or received from outside sources by a regulated entity or the Office of Finance, related to the conduct of the business of a regulated entity or the Office of Finance (which business, in the case of the Office of Finance, shall include any functions performed with respect to the Financing Corporation) or to legal or regulatory requirements, regardless of the following—

(1) Form or format, including hard copy documents (*e.g.,* files, logs, and reports), electronic documents (*e.g.,* e-mail, databases, spreadsheets, PowerPoint presentations, electronic reporting systems, electronic tapes and back-up tapes, optical discs, CD–ROMS, and DVDs), and voicemail or recorded telephone line records;

(2) Where the information is stored or located, including network servers, desktop or laptop computers and handheld computers, other wireless devices with text messaging capabilities, and on-site or off-site at a storage facility;

(3) Whether the information is maintained or used on regulated entity or Office of Finance equipment, or on personal or home computer systems of an employee; or

(4) Whether the information is active or inactive.

Record hold means a requirement, an order, or a directive from a regulated entity, the Office of Finance, or FHFA that the regulated entity or the Office of Finance is to retain records relating to a particular issue in connection with an actual or a potential FHFA examination, investigation, enforcement proceeding, or litigation of which the regulated entity or the Office of Finance has received notice from FHFA or otherwise has knowledge.

Record retention schedule means a schedule that details the categories of records a regulated entity or the Office of Finance is required to retain and the corresponding retention periods. The record retention schedule includes all media, such as microfilm and machine-readable computer records, for each record category.

Regulated entity means the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, or any Federal Home Loan Bank; the term "regulated entities" means, collectively, the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and the Federal Home Loan Banks.

Retention period means the length of time that records must be kept before they are destroyed, as determined by the organization's record retention schedule. Records not authorized for destruction have a retention period of "permanent."

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as amended.

§ 1235.3 Establishment and evaluation of a record retention program.

(a) *Establishment.* Each regulated entity and the Office of Finance shall establish and maintain a written record retention program and provide a copy of such program to the Deputy Director of the Division of Enterprise Regulation, or his or her designee, or the Deputy Director for the Division of Federal Home Loan Bank Regulation, or his or her designee, as appropriate, within 180 days of the effective date of this part, and annually thereafter, and whenever a significant revision to the program has been made.

(b) *Evaluation.* Management of each regulated entity and the Office of Finance shall evaluate in writing the adequacy and effectiveness of the record retention program at least every two years and provide a copy of the evaluation to the board of directors and the Director.

§ 1235.4 Minimum requirements of a record retention program.

(a) *General minimum requirements.* The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall:

(1) Assure that retained records are complete and accurate;

(2) Assure that the form of retained records and the retention period—

(i) Are appropriate to support administrative, business, external and internal audit functions, and litigation of the regulated entity or the Office of Finance; and

(ii) Comply with requirements of applicable laws and regulations, including this part;

(3) Assign in writing the authorities and responsibilities for record retention activities for employees, including line managers and corporate management;

(4) Include policies and procedures concerning record holds, consistent with § 1235.5, and, as appropriate, integrate them with policies and procedures throughout the organization;

(5) Include an accurate, current, and comprehensive record retention schedule that lists records by major categories, subcategories, record type, and retention period, which retention period is appropriate to the specific record and consistent with applicable legal, regulatory, fiscal, operational, and business requirements;

(6) Include appropriate security and internal controls to protect records from unauthorized access and data alteration;

(7) Provide for appropriate back-up and recovery of electronic records to ensure the same accuracy as the primary records;

(8) Provide for a periodic testing of the ability to access records; and

(9) Provide for the proper disposition of records.

(b) *Minimum storage requirements for electronic records.* Electronic records, preferably searchable, must be maintained on immutable, non-rewritable storage in a manner that provides for both ready access by any person who is entitled to access the records, including staff of FHFA, and accurate reproduction for later reference by transmission, printing or other means.

(c) *Communication and training.*—(1) The record retention program established and maintained by each regulated entity and the Office of Finance under § 1235.3 shall provide for periodic training and communication throughout the organization.

(2) The record retention program shall:

(i) Provide for communication throughout the organization on record retention policies, procedures, and record retention schedule updates; and

(ii) Provide for training of and notice to all employees on a periodic basis on their record retention responsibilities, including instruction regarding penalties provided by law for the unlawful removal or destruction of records. The record retention program also shall provide for training for the agents or independent contractors of a regulated entity or the Office of Finance, as appropriate, consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance.

§ 1235.5 Record hold.

(a) *Notification by FHFA.* In the event that FHFA is requiring a record hold, FHFA shall notify the chief executive officer of the regulated entity or the Office of Finance. Regulated entities and the Office of Finance must have a written policy for handling notice of a record hold.

(b) *Notification by a regulated entity or the Office of Finance.* The record retention program of a regulated entity and the Office of Finance shall—

(1) Address how employees and, as appropriate, how agents or independent contractors consistent with their respective roles and responsibilities to the regulated entity or the Office of Finance, will receive prompt notification of a record hold;

(2) Designate an individual to communicate specific requirements and instructions, including, when necessary, the instruction to cease immediately any otherwise permissible destruction of records; and

(3) Provide that any employee and, as appropriate, any agent or independent contractor consistent with his or her respective role and responsibility to the regulated entity or Office of Finance, who has received notice of a potential investigation, enforcement proceeding, or litigation by FHFA involving the regulated entity or the Office of Finance or an employee, or otherwise has actual knowledge that an issue is subject to such an investigation, enforcement proceeding or litigation, shall notify immediately the legal department or the individual providing legal services as well as senior management of the regulated entity or the Office of Finance and shall retain any records that may be relevant in any way to such investigation, enforcement proceeding, or litigation.

(c) *Method of record retention during a record hold.* The record retention program of each regulated entity and the Office of Finance shall address the method by which the regulated entity or the Office of Finance will retain records during a record hold. Specifically, the program shall describe the method for the continued preservation of electronic records, including e-mail, and, as applicable, the conversion of records from paper to electronic form as well as any alternative storage method.

(d) *Access to and retrieval of records during a record hold.* The record retention program of each regulated entity or the Office of Finance shall ensure access to and retrieval of records by the regulated entity and the Office of Finance, and access, upon request, by FHFA, during a record hold. Such access shall be by reasonable means, consistent with the nature and availability of the records and existing information technology.

§ 1235.6 Access to records.

Each regulated entity and the Office of Finance shall make its records available promptly upon request by FHFA, at a location and in a form and manner acceptable to FHFA.

§ 1235.7 Supervisory action.

(a) *Supervisory action.* Failure by a regulated entity or the Office of Finance to comply with this part may subject the regulated entity or the Office of Finance or the board members, officers, or employees thereof to supervisory action by FHFA under the Safety and Soundness Act, including but not limited to cease-and-desist proceedings, temporary cease-and-desist proceedings, and civil money penalties.

(b) *No limitation of authority.* This part does not limit or restrict the authority of FHFA to act under its safety and soundness mandate, in accordance with the Safety and Soundness Act. Such authority includes, but is not limited to, conducting examinations, requiring reports and disclosures, and enforcing compliance with applicable laws, rules, and regulations.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1732—[Removed]

■ 4. Remove part 1732.

Dated: June 1, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–14055 Filed 6–7–11; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 23, 25, 27, and 29

[Docket No. FAA–2010–0224; Amendment Nos. 23–61, 25–134, 27–46, and 29–53]

RIN 2120–AJ57

Airworthiness Standards; Electrical and Electronic System Lightning Protection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) amends the lightning protection airworthiness standards by establishing new lightning protection regulations for electrical and electronic systems installed on aircraft certificated under parts 23, 27, and 29, and revises lightning protection regulations for electrical and electronic systems installed on airplanes certificated under part 25. This rule establishes two levels of lightning protection for aircraft systems based on consequences of system function failure: Catastrophic consequences which would prevent continued safe flight and landing; and hazardous or major consequences which would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition. This rule also establishes lightning protection for aircraft systems according to the aircraft's potential for lightning exposure. The airworthiness standards establish consistent lightning protection requirements for aircraft electrical and electronic systems.

DATES: These amendments become effective August 8, 2011.

FOR FURTHER INFORMATION CONTACT: Lee Nguyen, AIR–130, Federal Aviation Administration, Suite 4102, 470 L'Enfant Plaza, Washington, DC 20591; telephone (202) 385–4676; facsimile (202) 385–4651, e-mail *lee.nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701(a)(1). Under that section, the FAA is charged with prescribing regulations to promote safe flight of civil aircraft in air commerce by prescribing minimum standards in the interest of safety for appliances and for the design, material, construction, quality of work, and performance of aircraft, aircraft engines, and propellers. This regulation is within the scope of that authority by prescribing standards to protect aircraft electrical and electronic systems from the effects of lightning.

I. Background and History

Existing regulations for the lightning protection of electrical and electronic systems installed on aircraft certificated under parts 23, 27 and 29 of Title 14, Code of Federal Regulations (14 CFR) require the type certification applicant only to "consider" the effects of lightning. Unlike system lightning protection regulations for part 25 airplanes, these regulations have not been significantly amended since they were first adopted, and do not reflect current advances in technology. Adopted in the 1960s, these regulations require that the aircraft be protected against catastrophic effects of lightning, but do not have specific requirements for electrical and electronic system lightning protection. At the time, most aircraft contained mechanical systems, or simple electrical and electronic systems. Airframe components were made from aluminum materials, with high electrical conductivity, and offered good protection against lightning.

The early 1980s ushered in part 25 transport airplane designs that routinely included more complex electrical and electronic systems. In addition, there has been a trend for increased use of composite aircraft materials with less inherent lightning protection than aluminum. As electrical and electronic systems became more common on part 25 airplanes, the FAA issued § 25.1316 on April 28, 1994 (59 FR 22112), specifically requiring protection for electrical and electronic systems on part 25 transport category airplanes.

A. Summary of the Notice of Proposed Rulemaking (NPRM)

The NPRM, Notice No. 10–05, published in the **Federal Register** on April 2, 2010 (75 FR 16676), is the basis for this final rule. In the NPRM, the FAA proposed to establish type certification standards for lightning protection of electrical and electronic systems for aircraft certificated under parts 23, 27 and 29, equivalent to those found in part 25. At the same time, the NPRM proposed to revise § 25.1316 for transport category airplanes to be consistent in format with the proposed regulatory text for parts 23, 27 and 29. Overall, the NPRM proposed to establish lightning protection standards for aircraft systems according to the consequences of the failure of the functions they provide, and according to the aircraft's potential for lightning exposure.

The NPRM proposed the establishment of consistent performance standards for lightning protection of aircraft electrical and electronic systems against the catastrophic, hazardous or major failures of the functions these systems provide. The standards for protection against catastrophic failure would require an applicant to show that the function that the system performs would not be adversely affected during or after the time the aircraft is exposed to lightning, and that the system that was affected would automatically recover normal operation of that function in a timely manner after the aircraft is exposed to lightning. The standards for protection against hazardous or major failure would require the applicant to show that the affected function would recover normal operation in a timely manner after the aircraft is exposed to lightning.

The performance standards would also be imposed according to the aircraft's potential for exposure to lightning. The standards for all aircraft operated under instrument flight rules would meet more stringent requirements than aircraft certificated to part 23 and part 27 standards approved solely for operations under visual flight rules. This proposal ensured that protection would be applied to aircraft according to their potential for exposure to lightning.

The comment period for the NPRM ended on July 1, 2010.

B. Summary of the Final Rule

The final rule adopts all the standards proposed in the NPRM, with one exception. We chose not to adopt proposed paragraph (b)(1) to §§ 23.1306, 25.1316, 27.1316 and 29.1316, which required that the system must not be damaged after exposure to lightning for systems with hazardous or major failure conditions. We discuss the reasons for this decision later in this document.

C. Summary of Comments

The FAA received 17 comments from 8 commenters, including manufacturers, international aviation standards associations, and the European Aviation Safety Agency. All the commenters generally supported the proposed changes to parts 23, 25, 27 and 29. We discuss the comments in more detail below.

II. Discussion of the Final Rule

The FAA received comments on the following general areas of the proposal:

- Requirement that "the system must not be damaged" for systems with hazardous or major failure conditions;
- "Indirect" and "direct" effects of lightning;
- Requirement for automatic system recovery of the function with catastrophic failure conditions;
- Automatic system recovery of the function with hazardous failure conditions;
- Provide more guidance on "in a timely manner";
- Resolve conflict regarding systems providing multiple functions;
- Guidance on acceptable means of compliance;
- Definition of "catastrophic", "hazardous", and "major failure conditions".

Below is a more detailed discussion of the rule, as it relates to the substantive comments the FAA received to the NPRM.

Requirement That "The System Must Not be Damaged" for Systems With Hazardous or Major Failure Conditions

The FAA proposed for §§ 23.1306, 25.1316, 27.1316 and 29.1316, in paragraph (b)(1), that each electrical and electronic system that performs a function, for which failure would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that the system is not damaged after the aircraft is exposed to lightning.

The SAE International AE–2 Lightning Committee, Cessna Aircraft Company, Garmin International, and an individual commenter asked that the FAA delete paragraph (b)(1). The SAE AE–2 Lightning Committee and Cessna expressed concern that the proposal would not reflect a codification of current industry practices as characterized by the FAA. The SAE AE–2 Committee and the individual commenter also expressed concern that the proposal would: (1) Have a significant economic impact on the production of aircraft that use multiple redundant antennas for radio systems performing functions required to comply with paragraph (b)(1); and (2) reflect a significant change to the existing system lightning protection regulations.

The commenters explained that although lightning commonly attaches to antennas, these systems use redundant, spatially separated antennas so that a single lightning strike will not damage more than a single antenna and its associated radio system. If paragraph (b)(1) were adopted, significant changes would be required for radio and antenna installation design. Specifically, aircraft designers and installers would have to install external sensors (e.g., antennas, air data probes) that will not be damaged by lightning strikes, and thus enable the system to remain recoverable after the lightning event. Such sensors are generally heavier, more complex, and more costly than current sensor systems. The commenters stated that such sensors are unnecessary, since using redundant and spatially separated antennas for radio systems provide effective lightning protection for these systems. The SAE AE–2 Committee pointed out that the FAA did not properly consider the economic impact of paragraph (b)(1) in its analysis.

After careful consideration of the points raised by the commenters, we have concluded that proposed paragraph (b)(1) should not be adopted. When we originally developed paragraph (b)(1), we did so in response to a recommendation from the Electromagnetic Effects Harmonization Working Group (EEHWG) of the Transport Airplane and Engines Issues Group under the Aviation Rulemaking Advisory Committee, which assumed that a lightning strike to these systems would cause damage resulting in the unrecoverable loss of the function, even if the system included redundant elements to maintain system integrity and availability. Under this assumption, the systems could no longer perform their intended functions, which would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition.

The commenters showed that the EEHWG incorrectly assumed that loss of a function (caused by lightning damage) performed by a system equipped with external sensors such as radio antennas and air data probes—which are occasionally damaged by lightning—would be unrecoverable. If the proposed rule had been adopted, designers and manufacturers would no longer be able to use sensor separation as a means of compliance. Thus the rule change would have eliminated a means of compliance that is acceptable under the current regulatory scheme.

Garmin further commented that, if adopted, the proposed paragraph (b)(1) would have the unintended effect of requiring excessive lightning protection. Garmin explained that systems performing functions with hazardous or major failure consequences may include systems that perform other functions for which the failure would have minor consequences or even no safety effect. Garmin suggested that the proposed standard should be required for only those functions having hazardous or major failure consequences similar to that provided in proposed paragraph (b)(2), which requires each electrical and electronic system that performs a function, for which failure would reduce the capability of the aircraft or the ability of the flightcrew to respond to an adverse operating condition, be designed and installed so that the function recovers normal operation in a timely manner after the aircraft is exposed to lightning. The FAA acknowledges Garmin's point that paragraph (b)(1) may be subject to this kind of unintended interpretation.

For these reasons, we have determined that the proposed paragraph (b)(1) would not serve the purpose that we had intended and should not be adopted. Further, this requirement would limit the approaches that aircraft system designers may use to show that the design and installation meets the requirements of paragraph (b)(2). As proposed, this provision will have no impact on safety because paragraph (b)(2) will require that the "function" must recover in a timely manner after lightning exposure. Garmin's concern over unintended interpretations, as well as the individual commenter's concern for additional cost impact are resolved by our decision not to adopt this proposal.

Finally, Cessna recommended that the FAA revise the proposed requirement of "system must not be damaged after the airplane is exposed to lightning" to "system is installed such that damage to the system is minimized as a result of the airplane being exposed to lightning."

The FAA disagrees. The term "minimized" would require a subjective evaluation of the damage, and defeat our purpose to provide an objective measure of system lightning protection effectiveness.

Indirect Effects and Direct Effects of Lightning

The SAE AE–2 Lightning Committee commented that the proposed regulatory text did not use the phrase "indirect effects of lightning," although the phrase is used in current § 23.1309(e) and AC 20–136A, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning." The commenter stated that this omission may cause confusion when considering regulations such as § 27.610, which is intended to address the "direct effects of lightning."

The FAA acknowledges the commenter's point that the terms

"indirect" and "direct" were not used in the regulatory text, although they are often used to classify the specific effects of lightning. The phrases "direct effects of lightning" and "indirect effects of lightning" generally refer to the mechanism in which lightning affects electrical and electronic systems or functions. Direct effects are typically associated with the actual lightning attachment to the airframe or electrical and electronic system external sensors which can cause damage in the form of burning, blasting, or deformation. Conversely, indirect effects are those caused by lightning energy that is electrically coupled into electrical and electronic equipment and its associated wiring. The performance standards address protection of aircraft electrical and electronic systems when exposed to lightning based on the consequences of failure of the functions that the systems perform. The regulations, as adopted, are not intended to differentiate between how the effects of lightning are caused, but are instead directed at the continued performance of the system or function.

The commenter also asserted that the performance standards do not reflect current industry practices or regulatory requirements. The FAA disagrees; these performance standards are consistent with the existing §§ 23.1309(e), 25.1316, 27.1309(d), and 29.1309(h). These regulations refer to the effects of lightning in general, not to "indirect effects" of lightning exclusively. The existing § 23.1309(e), specifically states that both direct and indirect effects of lightning must be considered. Section 25.1316 addresses protection of the electrical and electronic systems against lightning. Sections 27.1309(d) and 29.1309(h) require that the effects of lightning strikes on the rotorcraft must be considered. Accordingly, the performance standards established by this rulemaking are consistent with existing regulations and industry practice.

The commenter also stated that the proposed rules should specify that the requirement refers to "indirect effects of lightning" to be consistent with AC 20–136A. In fact, the AC addresses both indirect and direct effects of lightning. The AC does not, however, describe the methods for showing compliance if an electrical or electronic system is subject to direct lightning attachment (direct effects). It refers to other documents, such as SAE Aerospace Recommended Practice (ARP) 5416, *Aircraft Lightning Test Methods,* for methods to show compliance for direct effects. Nonetheless, the AC does speak to the need for the applicant to address the direct effects of lightning on electrical and electronic systems.

Finally, the commenter stated that the proposed rules would require a change in approach if they apply to the direct effects of lightning, as the proposed rules stated that essential systems must not be damaged after the aircraft is exposed to lightning. As discussed previously, the FAA has decided not to adopt the proposed requirement of paragraph (b)(1). This decision resolves this commenter's concern.

Requirement for Automatic System Recovery of the Function With Catastrophic Failure Conditions

In the NPRM, the FAA proposed paragraph (a)(2), which required that each electrical and electronic system that performs a function for which failure would prevent the continued safe flight and landing of the aircraft must be designed and installed so that the system automatically recovers normal operation of that function in a timely manner after the aircraft is exposed to lightning. In part, this proposal was based on EEHWG recommendation submitted to the FAA. That recommendation also contained a relieving clause which allowed the requirement for "automatic and timely recovery" to be disregarded if the automatic and timely recover would interfere with continued performance of other operational or functional requirements of the system.

We omitted the relieving clause in the proposal published in the NPRM, which in effect made automatic and timely recovery compulsory. After careful review of the EEHWG's recommendation for an exception to the "automatic and timely recovery" requirement, we could not justify its inclusion because we could not find any real-world example where this provision would apply. Also, the phrase "unless this conflicts with other operational or functional requirements of that system" provides no objective definition of operational or functional requirements for the system. Finally, we were unable to develop standards that would ensure an equivalent level of safety should the exception be adopted.

The SAE AE–2 Lightning Committee commented on the FAA's decision to eliminate the relieving clause. It stated that (1) this clause would not decrease safety as long as the function is maintained, and (2) some systems do exist that, due to other functional or operational requirements, cannot recover automatically without flightcrew action: Such as attitude and heading reference systems, fly-by-wire flight controls, and brake-by-wire systems. The committee submitted, as an example of a system mode change that requires flightcrew action, the Falcon 7X fly-by-wire control system for which the flightcrew has to trigger normal mode recovery from a backup mode after the aircraft is exposed to lightning.

The FAA has considered the reasons and examples provided and has concluded that they do not present scenarios that adequately justify the need for including the recommended exception. Paragraph (a)(1) requires that functions with catastrophic failure conditions are "not adversely affected" by lightning. A system mode change caused by lightning, that requires flightcrew action, would be evaluated according to existing guidance and practices to determine whether it is an adverse effect. As such, the examples provided would be evaluated to determine if the function was "adversely effected" under paragraph (a)(1), and do not justify an exception clause to paragraph (a)(2).

Further, the commenters did not suggest any objective standard for what should occur in the event of an exception, should we adopt the exception clause. Therefore, we will not change the regulatory text based on the comment.

Automatic System Recovery of the Function With Hazardous Failure Conditions

In the NPRM, the FAA proposed to require that systems having the potential for hazardous failure consequences must recover normal operation of the function in a timely manner after the aircraft is exposed to lightning.

Airbus commented that the FAA should require the higher standard of automatic recovery for hazardous failure conditions because it would help to avoid situations where the pilot has to manually recover from multiple failures with hazardous classification.

After consideration, the FAA has decided against the Airbus suggestion. The standard gives certification applicants the flexibility to choose automatic or pilot-initiated recovery for functions with hazardous failure conditions. This standard is consistent with the existing § 25.1316(b) and with prior special conditions, both of which have provided a satisfactory level of safety.

Guidance on "In a Timely Manner"

Garmin asked that the FAA provide more guidance on what constitutes "in a timely manner." It suggested the

following paragraph should have been inserted into the NPRM preamble:

"The term 'in a timely manner,' when used for recovery of catastrophic, hazardous, and major functions, is referring to the length of time the function(s) may be lost before it would be considered catastrophic, hazardous, or major. For major and hazardous functions, crew interaction is allowed in the recovery of the function. The FAA would determine what constitutes 'timely' automatic recovery on a case-by-case evaluation for failure of any specific function and its failure effect on the aircraft, pilot workload, and safety margins."

The FAA has determined that the phrase "in a timely manner" does not lend itself to a generic description since it is dependent upon various factors such as the function performed by the system being evaluated, the specific system design, interaction between systems, and interaction between the system and the flight crew. The FAA agrees that we will determine what constitutes "timely recovery" on a case-by-case evaluation based on engineering and flight crew assessment of the specific function and its failure effects. Should consideration of additional factors be appropriate, the FAA would consider those as well. Since the Garmin's comment addresses the preamble to the NPRM, no change to the final regulations is required.

Resolve Conflict Regarding Systems Providing Multiple Functions

Garmin commented that there is a conflict between the two following paragraphs in the NPRM preamble:

"For systems that provide one or more functions, the proposal would require the system to automatically recover normal operations of those functions for which failure could be catastrophic. Other functions would not be required to return to normal operation* * *" and "The proposed requirements for protection against hazardous or major failure would require the applicant to show that the system would not be damaged, and the function would recover normal operation in a timely manner after the aircraft is exposed to lightning."

The FAA agrees with Garmin, and clarifies that the other functions would not be required to "automatically" return to normal operation.

Guidance on Acceptable Means of Compliance

Garmin, in their comment, was concerned with the means of compliance for these proposed regulations. Garmin proposed that the following paragraph should be added to the preamble of the NPRM:

"The term 'after the airplane is exposed to lightning' is not intended to mean that all systems regardless of criticality are required to meet the transient levels resulting from the most severe lightning strike to the aircraft (200kA). When the rule or text in the preamble refers to systems or functions needing to meet requirements 'after the airplane is exposed to lightning,' the development of the transient levels at the system/equipment interfaces can take into account the criticality of the system/equipment. Further guidance is provided in AC 20–136A."

Since this comment addresses the preamble of the NPRM, there is no need for a change in the regulatory text. However, the NPRM preamble wording cited by Garmin is not about lightning induced transient characteristics, but focuses on lightning protection requirements for systems and functions. These regulations do not define a specific means of compliance. AC 20–136A provides guidance on an acceptable means of compliance for lightning induced transient characteristics at the system interfaces, which addresses Garmin's concerns.

Definitions of Catastrophic, Hazardous, and Major Failure Conditions

The European Aviation Safety Agency (EASA) generally concurred with the FAA's proposed requirements, but suggested new wording that combined existing EASA regulation requirements for electrical and electronic system lightning protection with the FAA's wording.

The FAA has decided not to adopt EASA's proposed revision because the FAA's regulatory text more clearly emphasizes that lightning protection must ensure the continued performance of the system functions. Adopting the regulatory text proposed by EASA would not further the FAA's intent to place the emphasis on protecting the function. In addition, the FAA's adopted regulatory text is consistent with that used in the High-Intensity Radio Frequency regulations (§§ 23.1307, 25.1317, 27.1317, and 29.1317), which clearly emphasizes the need to protect the functions performed by the systems more than the systems themselves.

Miscellaneous Issues

The SAE AE–2 Committee commented that in the proposed § 29.1316(b), the term "airplane" should be "rotorcraft". The FAA agrees and adopts this change.

One individual recommended that the FAA mandate the calibration of precision tools that are used to return an aircraft to service, because it is important to ensure that a positive crimp, torque or connection is made. This comment does not address any requirements that were proposed in the NPRM and is outside the scope of the proposed rules. Therefore, we do not make any regulatory changes based on the comment.

III. Regulatory Notices and Analysis

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its

costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impact of the final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble. Such a determination has been made for this final rule.

The reasoning for this determination follows: In a cost survey of industry conducted by the FAA, six of the seven replying firms reported no incremental cost from the provisions included in this final rule. One firm reported "little or no cost." The reason for little or no incremental cost is that these firms (six out of seven) reported usage of Advisory Circular AC 20–136A, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," as guidance for complying with lightning requirements. Consequently, these firms are already in compliance with the final rule as it represents a codification of current practices. For manufacturers of Part 25 airplanes, cost changes should be minimal in any case, as the changes in the final rule are clarifying only. Moreover, four of the seven respondents reported at least some expected benefits from the provisions included in this final rule (See "Benefits" section below). We did receive comments that one requirement would raise costs. The FAA removed this requirement. The FAA therefore has determined that this final rule will have minimal costs with positive net benefits and does not warrant a full regulatory evaluation. Our analysis follows below.

The FAA has also determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Total Costs and Benefits of This Rulemaking

As noted above, there are little or no expected costs for this final rule and some benefits. The benefits result in increased safety. The benefits therefore justify the costs. See details in the separate costs and benefits sections below.

Who is potentially affected by this rulemaking?

Manufacturers of parts 23, 25, 27, and 29 aircraft and manufacturers of electrical and electronic systems for those aircraft.

Assumptions and Sources of Information

- We use a ten-year period of analysis, 2009–2018.
- Data on costs of compliance and benefits of this rule were obtained from an FAA survey of industry.
- Firms are defined as "small" or "large" using Small Business Administration (SBA) size standards (U.S. SBA. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, July 21, 2006).

Costs of This Rulemaking

On February 9, 2009, we sent a detailed cost survey to six manufacturers of Parts 23, 25, 27, and 29 aircraft and three manufacturers of electrical and electronic systems for those aircraft. In addition to several detailed cost questions, the survey also asked one question about potential benefits from the provisions included in this final rule. We received four responses to this initial survey. On March 17, 2009, we resurveyed the five non-respondents and, after additional follow-up requests, received three additional replies, although the last response came only on August 8, 2009. The seven responses we received were from manufacturers ranging from a small aircraft manufacturer (less than 1,500 employees) to the largest U.S. aircraft manufacturer. Despite repeated requests, we received no survey responses from the two part 27/part 29 manufacturers to whom we sent questionnaires, one never replying and the other eventually replying that management had "decided not to respond."

We did receive comments that the proposed paragraph (b)(1) would create costs. The FAA agrees and removes this requirement.

As shown in the table below, the respondents indicated little or no cost from the provisions included in this final rule.

SUMMARY OF COST SURVEY RESULTS

Firm	Type	Products certified to	Costs	Benefits
A	Airplane manufacturer	Part 23	No cost	"The certification process will be less ambiguous and slightly streamlined by writing some of the AC 20–136A requirements directly into the regulations."
B	Airplane manufacturer	Parts 23 & 25	No cost	"The commonality between parts and the ability to use the same substantiation across product lines is a very large benefit."
C	Airplane manufacturer	Parts 23 & 25	No cost	"Harmonization of Part 23 and Part 25 rules will simplify our certification process as our internal procedures benefit from any similarity of the two Parts."
D	Airplane manufacturer	Part 25	Little or no cost	No response to benefits question.
E	Electrical/electronic systems mfr	Parts 23 & 25	No cost	"NA."
F	Electrical/electronic systems mfr	Parts 23, 25, 27, & 29	No cost	"None."
G	Electrical/electronic systems mfr	Parts 23, 25, 27, & 29	No cost	

Benefits of This Rulemaking

As supported by the responses to the benefits question, shown in the table, the final rule and the standardization of rule language across parts will reduce firm costs by simplifying and clarifying the certification process.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As noted above, in a cost survey of industry, the FAA found little or no expected costs from this final rule. The reason for this finding is that all but one respondent reported usage of AC 20–136A, "Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning," as guidance for complying with system lightning requirements. We agree that the requirements of proposed paragraph (b)(1) would have an unintended effect and raise costs. The FAA removed this paragraph. Accordingly, this final rule represents current practice and imposes no more requirements than those previously voluntarily adopted by industry by following AC 20–136A. Consequently, these firms are already in compliance with the final rule as it represents a codification of AC 20–136A. For manufacturers of Part 25 airplanes, cost changes should, in any case, be minimal as the changes in the final rule are clarifying only. Therefore as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has reviewed the potential effect of this final rule and determined that the standards adopted by this rulemaking are based on internationally harmonized recommended regulations and compliance means and, thus, they do not create an obstacle to foreign commerce. For this reason, the FAA has determined that the standards adopted by this final rulemaking will comply with the Trade Agreements Act.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $140.8 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the FAA, when modifying its regulations in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. In the NPRM, we requested comments on whether the proposed rule should apply differently to intrastate operations in Alaska. We did not receive any comments, and we have determined, based on the administrative record of this rulemaking, that there is no need to make any regulatory distinctions applicable to intrastate aviation in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 308 (c)(1) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

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

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/*or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment or docket number of this rulemaking.

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

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends parts 23, 25, 27, and 29 of Title 14, Code of Federal Regulations, as follows:

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, ACROBATIC, AND COMMUTER CATEGORY AIRPLANES

■ 1. The authority citation for part 23 continues to read as follows:

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

■ 2. Add new § 23.1306 to read as follows:

§ 23.1306 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the airplane, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the airplane is exposed to lightning.

(b) For airplanes approved for instrument flight rules operation, each electrical and electronic system that performs a function, for which failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that the function recovers normal operation in a timely manner after the airplane is exposed to lightning.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ 3. The authority citation for part 25 continues to read as follows:

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

■ 4. Revise § 25.1316 to read as follows:

§ 25.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the airplane, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the airplane is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the airplane is exposed to lightning.

(b) Each electrical and electronic system that performs a function, for which failure would reduce the capability of the airplane or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that the function recovers normal operation in a timely manner after the airplane is exposed to lightning.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

■ 5. The authority citation for part 27 continues to read as follows:

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

■ 6. Amend § 27.610 by revising paragraph (d)(4) to read as follows:

§ 27.610 Lightning and static electricity protection.

* * * * *

(d) * * *

(4) Reduce to an acceptable level the effects of static electricity on the functioning of essential electrical and electronic equipment.

§ 27.1309 [Amended]

■ 7. Amend § 27.1309 by removing paragraph (d).

■ 8. Add a new § 27.1316 to read as follows:

§ 27.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the rotorcraft, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the rotorcraft is exposed to lightning.

(b) For rotorcraft approved for instrument flight rules operation, each electrical and electronic system that performs a function, for which failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that the function recovers normal operation in a timely manner after the rotorcraft is exposed to lightning.

■ 9. Add paragraph X. to Appendix B of part 27 to read as follows:

Appendix B to Part 27—Airworthiness Criteria for Helicopter Instrument Flight

* * * * *

X. Electrical and electronic system lightning protection. For regulations concerning lightning protection for electrical and electronic systems, see § 27.1316.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

■ 10. The authority citation for part 29 continues to read as follows:

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

■ 11. Amend § 29.610 by revising paragraph (d)(4) to read as follows:

§ 29.610 Lightning and static electricity protection.

(d) * * *

(4) Reduce to an acceptable level the effects of static electricity on the functioning of essential electrical and electronic equipment.

§ 29.1309 [Amended]

■ 12. Amend § 29.1309 by removing paragraph (h).

■ 13. Add new § 29.1316 to read as follows:

§ 29.1316 Electrical and electronic system lightning protection.

(a) Each electrical and electronic system that performs a function, for which failure would prevent the continued safe flight and landing of the rotorcraft, must be designed and installed so that—

(1) The function is not adversely affected during and after the time the rotorcraft is exposed to lightning; and

(2) The system automatically recovers normal operation of that function in a timely manner after the rotorcraft is exposed to lightning.

(b) Each electrical and electronic system that performs a function, for which failure would reduce the capability of the rotorcraft or the ability of the flightcrew to respond to an adverse operating condition, must be designed and installed so that the function recovers normal operation in a timely manner after the rotorcraft is exposed to lightning.

Issued in Washington, DC, on May 20, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–14142 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30787; Amdt. No. 494]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

DATES: *Effective Date:* 0901 UTC, June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Harry Hodges, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) *telephone:* (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC, on May 27, 2011.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, June 30, 2011.

PART 95 [AMENDED]

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 494 effective date June 30, 2011]

From	To	MEA
§ 95.6001 Victor Routes—U.S.		
§ 95.6003 VOR Federal Airway V3		
IS AMENDED TO READ IN PART.		
#Vance, SC VORTAC	Florence, SC VORTAC	*2000
*2000—GNSS MEA		
#Vance R–047 to COP Unusable BLO FL180 Except For Aircraft Equipped With Suitable RNAV.		
§ 95.6004 VOR Federal Airway V4		
IS AMENDED TO READ IN PART.		
Malad City, ID VOR/DME	Filob, ID FIX	10900
Filob, ID FIX	Hodni, ID FIX	*12000
*10800—MOCA		
*10800—GNSS MEA		
Hodni, ID FIX	Grips, WY FIX	*16000
*11700—MOCA		
*11700—GNSS MEA		
Grips, WY FIX	Rock Springs, WY VOR/DME	*11000
*10000—MOCA		
*10000—GNSS MEA		
§ 95.6007 VOR Federal Airway V7		
IS AMENDED TO READ IN PART.		
Chicago Heights, IL VORTAC	*Niles, IL FIX	2500
*3500—MRA		
*3000—MCA Niles, IL FIX, N BND		
*Niles, IL FIX	**Laird, IL FIX	3400
*3500—MRA		
**2600—MCA Laird, IL FIX, S BND		
Laird, IL FIX	Thorr, IL FIX	2500
Thorr, IL FIX	Pappi, IL FIX	*2500
*1800—MOCA		
Pappi, IL FIX	Talor, WI FIX	*4000
*1800—MOCA		
Talor, WI FIX	Petty, WI FIX	*6000
*1900—MOCA		
Petty, WI FIX	Proot, WI FIX	*4500
*1900—MOCA		
§ 95.6045 VOR Federal Airway V45		
IS AMENDED TO READ IN PART.		
Greensboro, NC VORTAC	*Prove, NC FIX	2700
*3500—MCA Prove, NC FIX, NW BND		
Prove, NC FIX	*Freon, NC FIX	4300
*4800—MCA Freon, NC FIX, NW BND		
Freon, NC FIX	Pulaski, VA VORTAC	6200
§ 95.6092 VOR Federal Airway V92		
IS AMENDED TO READ IN PART.		
Bebee, IL FIX	*Niles, IL FIX	3400
*3500—MRA		
*3000—MCA Niles, IL FIX, N BND		
*Niles, IL FIX	Chicago Heights, IL VORTAC	2500
*3500—MRA.		
§ 95.6097 VOR Federal Airway V97		
IS AMENDED TO READ IN PART.		
Chicago Heights, IL VORTAC	*Niles, IL FIX	2500
*3500—MRA		
*3000—MCA Niles, IL FIX, N BND		
*Niles, IL FIX	Bebee, IL FIX	3400
*3500—MRA		
§ 95.6157 VOR Federal Airway V157		
IS AMENDED TO READ IN PART.		

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 494 effective date June 30, 2011]

From	To	MEA
Key West, FL VORTAC *5700—MRA **1400—MOCA **1500—GNSS MEA	*Famin, FL FIX	**5000
*Famin, FL FIX *5700—MRA **1600—MOCA **1800—GNSS MEA	Dolphin, FL VORTAC	**5000
#Vance, SC VORTAC *2000—GNSS MEA #Vance R–047 To Cop Unusable BLO FL180 Except for Aircraft Equipped with Suitable RNAV.	Florence, SC VORTAC	*2000
§ 95.6162 VOR Federal Airway V162		
IS AMENDED TO READ IN PART.		
#East Texas, PA VOR/DME #Allentown R–240 Unusable Below 9000 Use East Texas R–059	#Allentown, PA VORTAC	3000
§ 95.6193 VOR Federal Airway V193		
IS AMENDED TO READ IN PART.		
Musky, MI FIX *2000—MOCA	Pullman, MI VOR/DME	*3000
Pullman, MI VOR/DME *2400—MOCA	Clock, MI FIX	*3000
§ 95.6222 VOR Federal Airway V222		
IS AMENDED TO READ IN PART.		
Logen, GA FIX *3700—MOCA	Corce, GA FIX	*4600
§ 95.6225 VOR Federal Airway V225		
IS AMENDED TO READ IN PART.		
Lee County, FL VORTAC *1500—MOCA	La Belle, FL VORTAC	*2000
La Belle, FL VORTAC *1500—MOCA	Diddy, FL FIX	*2000
§ 95.6325 VOR Federal Airway V325		
IS AMENDED TO READ IN PART.		
Womac, GA FIX *3700—MOCA	Logen, GA FIX	*4600
§ 95.6362 VOR Federal Airway V362		
IS AMENDED TO READ IN PART.		
#Alma, GA VORTAC *1800—MOCA *2000—GNSS MEA #ALMA R–309 Unusable, Use Vienna R–127.	Seybo, GA FIX	*5000
Seybo, GA FIX	Vienna, GA VORTAC	2000
§ 95.6408 VOR Federal Airway V408		
IS AMENDED TO READ IN PART.		
#East Texas, PA VOR/DME #Allentown R–240 Unusable Below 9000 Use East Texas R–059	#Allentown, PA VORTAC	3000
§ 95.6422 VOR Federal Airway V422		
IS AMENDED TO READ IN PART.		
Bebee, IL FIX *3500—MRA *3000—MCA Niles, IL FIX, N BND	*Niles, IL FIX	3400
*Niles, IL FIX	Chicago Heights, IL VORTAC	2500

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 494 effective date June 30, 2011]

From	To	MEA
*3500—MRA		
§ 95.6438 VOR Federal Airway V438		
IS AMENDED TO READ IN PART.		
#Grantsville, MD VOR/DME	*Flint, MD FIX	5300
*4300—MCA Flint, MD FIX, W BND		
#Grantsville DME Unusable Beyond 20NM, Below 6000		
Flint, MD FIX	Hagerstown, MD VOR	4000

From	To	MEA	MAA
§ 95.7001 Jet Routes			
§ 95.7079 Jet Route J79			
IS AMENDED TO READ IN PART.			
#Key west, FL VORTAC	Dolphin, FL VORTAC	18000	45000
#Key West R–037 Unusable			

From	To	Changeover Points	
		Distance	From
§ 95.8003 VOR Federal Airway Changeover Points Airway Segment V157			
IS AMENDED TO ADD CHANGEOVER POINT.			
Vance, SC VORTAC	Florence, SC VORTAC	21	Vance
V3			
IS AMENDED TO ADD CHANGEOVER POINT.			
Vance, SC VORTAC	Florence, SC VORTAC	21	Vance
V438			
IS AMENDED TO ADD CHANGEOVER POINT.			
Grantsville, MD VOR/DME	Hagerstown, MD VOR	39	Grantsville

[FR Doc. 2011–14043 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 417

[Docket No. FAA–2011–0181; Amdt. No. 417–2]

RIN 2120–AJ84

Launch Safety: Lightning Criteria for Expendable Launch Vehicles

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The FAA is amending its lightning commit criteria to account for new information about the risks of natural and triggered lightning. This action amends flight criteria for mitigating against naturally occurring lightning and lightning triggered by the flight of an expendable launch vehicle through or near an electrified environment in or near a cloud. These changes will increase launch availability and implement changes already adopted by the United States Air Force.

DATES: Effective July 25, 2011. Submit comments on or before July 8, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0181 using any of the following methods:

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

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and

5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Karen Shelton-Mur, Office of Commercial Space Transportation, AST–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7985; facsimile (202) 267–5463, e-mail *Karen.Shelton-Mur@faa.gov.*

For legal questions concerning this rule contact Laura Montgomery, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on commercial space transportation safety is found in Title 49 of the United States Codes, section 322(a), which authorizes the Secretary of Transportation to carry out rulemakings. 51 U.S.C. subtitle V, chapter 509, 51 U.S.C. 50901–50923 (Chapter 509) governs the FAA's regulation of the safety of commercial space transportation. This rulemaking is promulgated under the authority of section 322(a).

Direct Final Rule Procedure

The FAA anticipates this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rulemaking. Because the changes to the lightning commit criteria will increase launch availability and are already implemented at Air Force launch ranges, the public interest is well served by this rulemaking.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulations will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, the FAA will withdraw the direct final rule by publication in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the changes. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

The FAA will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The agency will consider comments filed after the comment period has closed if possible without incurring expense or delay. The FAA may make changes in light of the comments received.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. Mark the information that is considered proprietary or confidential. If the information is on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. The FAA holds it in a separate file to which the public does not have access, and the agency places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, the FAA treats it as any other request under the Freedom of Information Act, 5 U.S.C. 552. The FAA processes such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking portal at *http://www.regulations.gov;*

(2) Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket and amendment numbers of this rulemaking.

I. Background

On August 25, 2006, the FAA issued requirements designed for an expendable launch vehicle (ELV) to avoid natural and triggered lightning during flight. *Licensing and Safety Requirements for Launch,* 71 FR 50508 (Aug. 25, 2006). An ELV is an unmanned rocket that typically carries satellites to orbit. ELVs carry large amounts of fuel and, due to the explosive nature of the fuel, may not be permitted to reach populated areas in the event they go off course. In the United States, safety for ELVs is achieved by use of a flight termination system. A flight termination system prevents an errant launch vehicle from reaching a populated area by destroying the vehicle. A flight termination system consists of all components on board a launch vehicle that provide the ability to end its flight in a controlled manner. Without the restrictions mandated by appendix G of part 417, a lightning strike could disable a flight safety system yet allow continued flight of the launch vehicle without a launch operator being able to stop its flight.

By codifying appendix G, the FAA implemented criteria developed by a Lightning Advisory Panel (LAP) to the National Aeronautics and Space Administration (NASA) and the U.S. Air Force. *See* Merceret et al., ed., *A History of the Lightning Launch Commit Criteria and the Lightning Advisory Panel for America's Space Program,* NASA/SP–2010–216283, 124, par. 25 (Aug. 2010) (*A History of the Lightning Criteria*) and *Rationales for the Lightning Flight-Commit Criteria, NASA/TP–2010–216291,* (Oct. 7, 2010)(*Rationales for Lightning Criteria*). Appendix G's flight commit criteria impose time and distance restrictions on launch, requiring a launch operator to wait to initiate flight for specified amounts of time after a lightning strike or when launch would take a flight path too close to an electrified cloud.

In this direct final rule, the FAA is permitting greater launch availability. In brief, the FAA is reducing requirements that a launch operator wait to launch by expanding the applicability of certain exceptions and recognizing that the risk of triggering lightning is less than previously understood at distances closer than previously believed. The FAA is also codifying criteria for obtaining accurate radar reflectivity measurements to ensure calculation of the volume-averaged, height-integrated radar reflectivity (VAHIRR) and other measurements, such as the vertical extent of a cloud top, are representative of actual conditions at the time of launch, because these calculations are instrumental in determining the presence of and risk posed by electrified clouds.

II. New Requirements

A. General Applicability

The FAA is revising the general description of appendix G to clarify that the flight commit criteria are to mitigate lightning strikes and avoid initiation of lightning when a launch vehicle flies near or through a highly electrified environment in or near a cloud. The FAA is also clarifying that, when a launch operator uses optional equipment, such as a field mill, to increase launch availability, an operator may not ignore data that does not satisfy the requirement. This addition, particularly when read in conjunction with 14 CFR 417.113(c)(1)(ii), should ensure that a launch takes place only when it is clear that all the criteria are satisfied. Section 417.113(c)(1)(ii) states that a launch operator's launch safety rules [1] must ensure there is clear and convincing evidence that the criteria of appendix G, which apply to the conditions present at the time of lift-off, are not violated. Section G417.1 states that *all* lightning flight commit criteria of Appendix G must be satisfied. In other words, each paragraph of each section must be individually satisfied at the time of launch. In short, the burden is on the launch operator to ensure that conditions are safe for launch.

A launch operator must understand that each of the sections of appendix G deliberately *prohibits* launch under certain conditions. Since all of the criteria must be satisfied, appendix G must be read in its entirety to determine whether or not launch is prohibited. Thus, the satisfaction of any particular paragraph or section cannot be considered to *permit* launch. Even the simultaneous satisfaction of all sections means only that there are no known natural- or triggered-lightning threats that prohibit launch. According to § 417.113(c)(1)(ii), it is still necessary for the launch weather team to report any other hazardous conditions to the person with authority for deciding whether or not to launch.

B. New Definitions and Clarifications of Existing Definitions

Section G.417.3 of appendix G defines terms if they would not be familiar to a trained meteorological observer, such as "field mill," or if they constitute non-standard usage of an otherwise familiar term, such as "associated." The FAA is adding new definitions, clarifying existing ones, and making minor editorial changes to others. For terms not defined in this section, a useful reference is the AMS Glossary of Meteorology, American Meteorological Society, 2000: Glossary of Meteorology, 2nd ed., American Meteorological Society, Boston, MA, 850; also available on line at *http://amsglossary.allenpress.com/glossary.*

New definitions to appendix G include definitions of *Cone of silence, Electric field, Horizontal distance, Radar reflectivity,* and *Slant distance.*

A cone of silence is a volume within which a radar cannot detect any object and is an inverted circular cone centered on the radar antenna. A cone of silence consists of all elevation angles greater than the maximum elevation angle reached by the radar. The cone of silence is a volume that the radar beam cannot access because of a radar's maximum tilt elevation. Radar echoes close to and directly above the radar cannot be detected. The methodology of section G417.25(b) provides that the specified volume for the VAHIRR calculation must not contain any portion of the cone of silence. Note as well that, for any given search pattern, certain sectors may be blocked out for reasons of payload safety, and the specified volume also may not contain any portion of a sector blocked out for these reasons. The methodology of section G417.25(a) also provides that no other radar reflectivity measurements, such as those used to delineate a cloud, may be affected by any volume that is inaccessible to the radar.

An electric field is a vertical electric field (Ez) at the surface of the Earth. This definition differentiates the surface electric field from those measured aloft.

A horizontal distance is a distance that is measured horizontally between a field mill or electric-field-measurement point and the nearest part of the vertical projection of an object or flight path onto the surface of the Earth. The FAA is defining horizontal distance in order to distinguish between the measurement of this two-dimensional distance and the three-dimensional "slant distance."

Radar reflectivity means the radar reflectivity factor due to hydrometeors, in dBZ. This is non-standard usage of a term that is defined in the Glossary of Meteorology. Radar reflectivity measurements in units of dBZ (as defined in the Glossary and not further discussed herein) are further specified in section G417.25(a) and are used throughout this appendix, including for the calculation of VAHIRR.

A slant distance means the shortest distance between two points, whether horizontal, vertical, or inclined in three dimensional space. A slant distance is used in measuring the distance between a radar reflectivity or VAHIRR measurement point and either a flight path or an object such as a cloud.

The FAA is also clarifying the definitions of *Associated, Cloud, Disturbed weather, Flight path, Transparent,* and *Volume-averaged height-integrated radar reflectivity* (VAHIRR). The following paragraphs describe the changes made to these definitions and the reasons for those changes.

Associated means two or more clouds are caused by the same disturbed weather or are physically connected. The FAA is deleting the discussion contained in the current definition. Discussion is better placed in explanatory material like this preamble, and is unnecessary in regulatory text. Accordingly, it is still the case that "associated" does not have to mean occurring at the same time. It is also still the case that a cumulus cloud formed locally and a cirrus layer physically separated from that cumulus cloud and generated by a distant source are not associated, even if they occur over or near the launch point at the same time.

A cloud is a visible mass of suspended water droplets, ice crystals, or a combination of water droplets and ice crystals. A "cloud" includes the entire volume containing such particles. This clarification omits an unnecessary reference to the particles being produced by condensation of water vapor in the atmosphere. Note that this definition works together with that of "slant distance" to specify that standoff distances from a cloud be measured from the nearest edge of that cloud.

Disturbed weather is a weather system where a dynamical process destabilizes the air on a scale larger than individual clouds or cells. Disturbed weather specifically includes, but is not limited to, fronts, troughs, and squall lines. (In

[1] A launch operator must follow its safety rules. 14 CFR 417.113(a)(3).

this case, the examples are retained as a critical part of the definition.) The body of the definition remains unchanged, but the FAA is now adding a squall line as an important example of disturbed weather because, along with fronts and troughs, it is frequently related to electrification of the associated clouds.

Flight path means a launch vehicle's planned flight trajectory, including the trajectory's vertical and horizontal uncertainties resulting from all three-sigma guidance and performance deviations. The FAA is no longer referencing wind effects because three-sigma dispersions already take wind effects into account.

The definition of *transparent* is clarified to mean any of the following conditions apply:

➢ Objects above, including higher clouds, blue sky, and stars are not blurred, are distinct, and are not obscured when viewed at visible wavelengths;

➢ Objects below, including terrain, buildings, and lights on the ground, are clear, distinct, and not obscured when viewed at visible wavelengths;

➢ Objects above or below are seen distinctly not only through breaks in a cloud;

➢ The cloud has a radar reflectivity of less than 0 dBZ.

Historically, transparency has been determined by a person watching the sky. The weather experts at the Federal launch ranges prefer observations undertaken by a person. Rather than limiting visual observations to those made by a person standing outdoors, this definition reflects the fact that transparency may be determined by satellite or camera as well. A person may also look at images of the conditions outside to ascertain transparency. For these reasons, the phrase "at visible wavelengths" has been retained; clouds that look transparent to a human observer may not look transparent to an imaging sensor operating at another wavelength, and vice versa.

Volume-averaged height-integrated radar reflectivity means the product, expressed in units of dBZ-km, of the volume-averaged radar reflectivity (in dBZ) and the average cloud thickness (in kilometers) in the specified volume determined by a VAHIRR-measurement point. The old definition states that the calculation applies to "a specified volume relative to a point along the flight track." The change clarifies that VAHIRR may be computed at points other than along a flight path. New section G417.25(b) describes in detail how VAHIRR is calculated.

Additionally, the FAA is making minor editorial changes to the following definitions: *Anvil cloud, Precipitation, Moderate precipitation, Thick cloud layer, Triboelectrification,* and *Volume-averaged height-integrated radar reflectivity.*

The FAA is also deleting several definitions.

Cloud edge is being deleted because it is now part of the definition of a cloud. *Electric field measurement at the surface of the Earth* is being deleted. The criteria this term contained are more accurately characterized as requirements, and, therefore, now appear in new section G417.25(c) *Electric field measurement,* which governs how to measure electric fields. *Electric field measurement aloft* is removed because Appendix G contains no criteria for electric field measurement aloft in the regulations. Although the FAA initially considered criteria for electric fields aloft, in the end, it did not promulgate requirements when it issued part 417. The definition was inadvertently left in the final rule. The definition of *Ohms/square* is removed because the term is a standard unit of measurement. The definition of *Specified volume* is no longer necessary because the term contained requirements now located in section G417.25. *Treated* is being deleted because it contained requirements now located in section G417.23(b). *Within* is being deleted because more precise language regarding the distance between a flight path and a cloud should prevent any misunderstanding regarding the distance for which a launch operator must account.

III. Changes to Temperature, Time, and Distance Restrictions for Anvil and Debris Clouds

In this direct final rule, the FAA is permitting greater launch availability. In brief, the FAA is reducing requirements that a launch operator wait to launch by expanding the applicability of certain exceptions and decreasing waiting time requirements because of recognition that the risk of triggering lightning is less than previously understood at distances closer than previously believed. In order to ensure satisfaction of minimum standards of measurement and uniformity across launch sites, the FAA is codifying in new section G417.25 the measurement criteria used during a second airborne field mill campaign (ABFM–II) conducted during 2000 and 2001. A lightning advisory panel that provides expertise to the Air Force and NASA recommended this approach to the ranges. The FAA also accepts the more simple approach that the ranges currently use to calculate volume-averaged, height-integrated radar reflectivity because it is more conservative than the codified approach. Acceptable techniques to calculate VAHIRR are further discussed in Section III.C.3 below.

A. Structural Changes

At the outset, the FAA must note that the order of the new requirements for anvil and debris clouds is reversed from the old requirements. These new rules have also been written so that only one set of restrictions applies at a time. For example, for attached anvil clouds, in old section G417.9.

- Paragraph (a) contains requirements for flight paths through or within 10 nautical miles of the cloud,
- Paragraph (b) contains requirements for flight paths through or within 5 nautical miles of the cloud, and
- Paragraph (c) contains requirements for flight paths through a cloud.

This organization is potentially confusing, since all three paragraphs apply to flight through, and both paragraphs (a) and (b) apply to flight within 5 nautical miles of, the cloud. The application has been simplified in the new G417.9, where—

- Paragraph (b) contains all requirements for flight paths through a cloud,
- Paragraph (c) contains all requirements for flight paths greater than 0 and less than or equal to 3 nautical miles from the cloud,
- Paragraph (d) contains all requirements for flight paths greater than 3 and less than or equal to 5 nautical miles from the cloud, and finally,
- Paragraph (e) contains all requirements for flight paths greater than 5 and less than or equal to 10 nautical miles from a cloud.

Whereas more than one paragraph could apply under the old rule, the end result of this restructuring is that, for any given slant distance from a cloud, at most, one paragraph will apply in the new rule. For example, suppose a launch vehicle's flight path would place the closest approach of the vehicle 2 nautical miles from an attached anvil cloud. Under the old rule, the operator would need to satisfy the requirements of both sections G417.9(a), because 2 nautical miles is less than 10 nautical miles, and G417.9(b), because 2 nautical miles is less than 5 nautical miles. Under the new rule, the operator only needs to satisfy the requirements of G417.9(c) because 2 nautical miles is between zero and 3 nautical miles. This change should make the rules easier to follow. However, because of this

restructuring, there is not a one-to-one correspondence between the paragraphs of the old and new rules.

Even in the rules that have been structurally rearranged, it must be remembered that slant distance from a cloud refers only to the closest approach of the vehicle. Otherwise multiple paragraphs may still be taken to apply. An operator must always take care that all paragraphs are satisfied.

B. Clarification of Applicability of Restrictions to Anvil Clouds Formed From Parents at Altitudes below −10 Degrees Celsius

Under new paragraphs (a) of sections G417.9 and G417.11, for both attached and detached anvil clouds, the requirements to wait before initiating flight apply only when an anvil cloud forms from a parent cloud that has a top at an altitude where the temperature is −10 degrees Celsius or colder. Even though anvil clouds can form in temperatures slightly above freezing, only anvil clouds with parents whose tops are at altitudes with temperatures at or below −10 degrees Celsius pose a real possibility of containing high electric fields.[2] When a convective cloud grows through different altitudes, it may reach altitudes with freezing or colder temperatures. At these altitudes the cloud may acquire ice particles, ice crystals, super-cooled water droplets or a combination thereof. It is primarily this mixture of phases that can produce a strong electrical generator within the cloud. When the cloud top has become colder than −10 degrees Celsius, the cloud is likely to be electrified, and when its top has become colder than −20 degrees Celsius, strong electrification is likely.[3]

The temperature criterion in paragraphs (a) applies to the parent cloud. Anvil clouds are limited to outflow from convective clouds at altitudes with temperatures at or colder than −-10 degrees Celsius. According to studies, anvil clouds that develop from cumulus clouds with cloud top temperatures warmer than −10 degrees Celsius rarely develop electric fields with the strength of a thunderstorm.[4]

In practice, this limitation of the flight commit criteria to anvil clouds formed from parents at sufficiently cold altitudes is not new. Although not clearly expressed in the old appendix G, the Federal ranges have historically limited their restrictions on flight to non-transparent anvil clouds formed from parents at altitudes where the temperatures are −10 degrees Celsius or colder.

C. Exceptions to the Requirement To Wait To Initiate Flight

This rulemaking increases the availability of exceptions to certain prohibitions on initiating flight under circumstances posing a risk of natural or triggered lightning. Specifically, although an FAA licensee must wait specified amounts of time after the last lightning discharge to initiate flight through a non-transparent attached or detached anvil cloud or a non-transparent debris cloud, the licensee need not wait, under the new versions of the anvil and debris-cloud rules, if all of the non-transparent anvil or debris clouds within 3 nautical miles of a flight path are located at altitudes where the temperature is colder than 0 degrees Celsius and if the volume-averaged, height-integrated radar reflectivity (VAHIRR) is less than +10 dBZ-km. For the longer standoff distances, anvil clouds must be cold within 10 nautical miles, but there is no requirement to calculate VAHIRR.

The launch operator must always remember, however, that all sections of Appendix G must be satisfied simultaneously. In particular, section G417.5, requires standoff distances of 10 nautical miles from a parent thunderstorm and from the lightning itself, so there will usually be portions of a non-transparent anvil or debris cloud through which flight is prohibited by the lightning provision even though it may not be prohibited by the anvil or debris cloud requirements themselves.

1. Reduced Restrictions on Launches With a Flight Path Greater Than 3 Nautical Miles From an Anvil or Debris Cloud

The first change reduces some restrictions on launches with a flight path greater than 3 nautical miles from a non-transparent anvil or debris cloud. For flight paths more than 3 nautical miles from a non-transparent anvil cloud, rather than requiring that a launch operator always wait after a lightning discharge, the FAA now requires only that the altitude of the portion of the cloud within a specified distance of the flight path be at temperatures less than 0 degrees Celsius to permit flight. For non-transparent debris clouds with flight paths greater than 3 nautical miles from the cloud, the FAA will no longer require any waiting after a lightning discharge or detachment.

For non-transparent anvil clouds, the requirements for a waiting period for flight paths more than 3 nautical miles from a cloud are not being dropped entirely. However, the requirements for anvil clouds will be more flexible beyond 3 nautical miles than they are under the current rules. For anvil clouds more than 3 nautical miles from a flight path, the FAA will require, unless the operator waits 3 hours after the last lightning discharge, that the altitudes at which the flight path passes within a specified distance of the cloud have temperatures of less than 0 degrees Celsius. This restriction was based on the first Airborne Field Mill campaign (ABFM–II) which showed that clouds at altitudes with temperatures of less than 0 degrees Celsius do not contain electric field magnitudes of greater than 3 kV/m. Merceret et al., *supra,* 242. The specific rule changes for attached and detached anvil clouds are explained in turn below. The reasons for the changes follow these descriptions.

i. Attached Anvil Clouds (G417.9)

A launch operator using flight paths of greater than 3 and less than or equal to 5 nautical miles from an attached non-transparent anvil cloud will no longer always need to wait 30 minutes after a lightning discharge, and will no longer need to show that the VAHIRR is less than 33 dBZ-kft within 3 hours of a lightning discharge. The old requirement is contained in both section G417.9(a), which requires waiting for 30 minutes after a lightning discharge regardless of distance, and in section G417.9(b), which only allows passage between 30 minutes and 3 hours after a lightning discharge, if the VAHIRR measurement is under +33 dBZ-kft and the altitudes at which the flight path passes within 5 nautical miles of the cloud have temperatures of less than 0 degrees Celsius.

Under the new requirements, the restriction applicable to flight paths between 3 and 5 nautical miles will be contained in section G417.9(d) and will require waiting for 3 hours after a lighting discharge *unless,* as with the old rule, the portion of the attached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius. A launch operator will no longer be required to wait for 30 minutes after a lightning discharge and will not need to calculate VAHIRR to be able to launch within 3

[2] Willett, ed., *Rationales for Lightning Criteria,* at 9, 45, 61, and 108.

[3] *Id.* at 45.

[4] Dye, J.E., W.P. Winn, J.J. Jones, and D.W. Breed, 1989: The electrification of New Mexico Thunderstorms. 1. Relationship between precipitation development and the onset of electrification, *J. Geophys. Res.*, **94**, 8643–8656. Breed, D.W., and J.E. Dye, 1989: The electrification of New Mexico Thunderstorms Part 2. Electric field growth during initial electrification. *J. Geophys. Res,* **94**, 14, 841–14, 854.

hours of a lightning discharge. However, a launch operator will still need to show satisfaction of the temperature at altitude restriction in order to launch within 3 hours of a lightning discharge.

Launch operators with flight paths of greater than 5 and less than or equal to 10 nautical miles from an attached non-transparent anvil cloud will no longer always need to wait 30 minutes after a lightning discharge as required by old section G417.9(a). Section G417.9(e) will now require waiting 30 minutes *unless* the portion of the attached anvil cloud at a slant distance of less than or equal to 10 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius.

ii. Detached Anvil Clouds (G417.11)

Launch operators with flight paths between 3 and 10 nautical miles from a detached non-transparent anvil cloud will no longer always need to wait 30 minutes after a lightning discharge and will no longer need to meet any requirements once 30 minutes have passed since the last lightning discharge. The new G417.11(d) will require that the launch operator wait 30 minutes after a lightning discharge from the cloud *unless* the portion of the detached anvil cloud at a slant distance of less than or equal to 10 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius. Section G417.11(a) currently requires that a launch operator wait 30 minutes after a lightning discharge, without the benefit of any exceptions. Additionally, current G417.11(b) does not allow a launch operator to pass between 3 and 5 nautical miles from a cloud between 30 minutes and 3 hours after a lightning discharge unless one of two sets of conditions are met. The new requirements are more flexible because they allow an exception to the requirement that the launch operator wait 30 minutes after a lightning discharge and because they do not require any conditions to be met after 30 minutes, even between 3 and 5 nautical miles.

iii. Rationale

The reduced restrictions on a flight path in excess of 3 nautical miles of a cold [5] anvil or debris cloud arise out of experimental and statistical work performed by the LAP, which recommends lightning requirements for launches at Federal launch ranges. The LAP has performed statistical analyses of data collected during ABFM–II. The goal of ABFM–II was to characterize the electric fields of anvil and debris clouds by flying an aircraft into these types of clouds while taking measurements at various distances from the clouds using electric field mills. The ABFM II campaign used aircraft carrying airborne field mills to measure the electric fields of clouds of interest. The campaign used ground-based radar to measure the reflectivity of the same clouds so that it would be possible to correlate the radar reflectivity of the clouds with the electric field measurements of the airborne field mills. Francis J. Merceret, et al., *On the Magnitude of the Electric Field near Thunderstorm-Associated Clouds,* 47 Journal of Applied Meteorology and Climatology 240, 243 (2008). These data were used to develop the VAHIRR parameter associated with cloud electrification. Both the temperature and VAHIRR criteria are correlated with mixed-phase precipitation, namely, the presence of water in both solid and liquid phases.

When a cloud spans the freezing level, the cloud can acquire a charge due to processes involving the mixing of liquid water droplets and ice crystals. A build up of electric charge in a cloud can lead to natural or triggered lightning. When the VAHIRR is less than 10 dBZ-km, it means that any mixed phase processes are unable to produce significant charging.

Like the Air Force and NASA before it, the FAA's existing triggered lightning criteria are based on the determination that a launch vehicle will not trigger lightning in an electric field with a magnitude of less than 3 kilovolts per meter (kV/m). The following discussion of each of the changes to the FAA's lightning commit criteria will, therefore, focus on showing how the FAA's new requirements ensure that the electric field magnitude along the flight path will be less than 3 kV/m, so that the new requirements will be essentially as safe as the current requirements.

Therefore, the FAA is able to follow the Federal launch range's lead in making the rules less restrictive because of new analyses of the ABFM–II data. T.P. O'Brien & R. Walterscheid, *Supplemental Statistical Analysis of ABFM–II Data for Lightning Launch Commit Criteria,* Aerospace Report No. TOR–2007(1494)–6, 3 (2007).

As a purely qualitative matter, out of 158 flights through non-transparent debris or anvil clouds during ABFM–II, the field mills detected no electric field with a magnitude of greater than 3 kV/m outside of a cloud. This was so even though the sample contained 30 flights through clouds with an electric field magnitude of more than 3 kV/m somewhere inside the cloud. *Id.*

Based on the data obtained, a qualitative analysis shows that flying more than 3 nautical miles from a non-transparent anvil cloud is as safe as the FAA's current requirements. The LAP also used this data to demonstrate statistically in two ways that it is extremely unlikely that the electric field magnitude will be more than 3 kV/m at distances greater than 3 nautical miles from the clouds.

A launch operator may calculate VAHIRR to help determine whether it is safe to fly, even if there has been a relatively recent lightning discharge. If the VAHIRR is less than 10 dBZ-km (about 33 dBZ-kft), the probability of an electric field of greater than 3 kV/m occurring is less than 1 in 10,000. Dye et al., *supra,* 14.

Calculating VAHIRR consists of multiplying the average cloud thickness and the average radar reflectivity found in a column with an 11 kilometer by 11 kilometer cross-section centered on a point of interest, where the two sides are oriented north-south and east-west. Because 3 nautical miles is 5.52 kilometers, a VAHIRR box centered on a flight path more than 3 nautical miles from the anvil cloud's edge will not contain the anvil cloud and will, therefore, have a radar reflectivity of zero, meaning that the VAHIRR will be zero. Because zero is clearly less than +33 dBZ-kft, flight at more than 3 nautical miles from the cloud will be at least as safe as the current requirements of G417.9(b)(2) and G417.11(b)(2)(ii), which only require a VAHIRR of less than +33 dBZ-kft. James E. Dye, et al., *Analysis of Proposed 2007–2008 Revisions to the Lightning Launch Commit Criteria for United States Space Launches,* 13th Conference on Aviation, Range and Aerospace Meteorology 8.2, 2–3 (available at *http://ams.confex.com/ams/88Annual/techprogram/programexpanded_474.htm*) (2008); Francis J. Merceret, *Risk Analysis of Proposed Reduction of Anvil and Debris Cloud LLCC Standoff Distances from Five to Three Miles,* 1–2 (2007) (internal LAP memorandum).

The LAP also performed a Gaussian statistical analysis on the electric field data collected between 6 kilometers (3.2 nautical miles) and 12 kilometers (6.5 nautical miles) from anvil and debris clouds in an attempt to determine the likelihood of various electric field magnitudes occurring at those distances from the clouds. The LAP found that an electric field of significance was highly unlikely.

[5] For the sake of brevity, the references to "cold" anvil clouds in this discussion refer to those whose parent clouds have tops at an altitude where the temperature is equal to or colder than −10 degrees Celsius.

The LAP used a Gaussian distribution to perform a conservative three-sigma worst-case risk analysis by using an assumed mean of three times the measured mean and an assumed error estimate of three times the calculated error. The LAP concluded that, even with these conservative assumptions, the probability that an electric field with a magnitude of 3 kV/m would occur within 3.2 to 6.5 nautical miles of a non-transparent anvil or debris cloud was negligible; the probability of a field of even 2 kV/m was on the order of 10^{-7}. Dye et al., *supra,* at 3–4. These probabilities were obtained by only analyzing non-transparent clouds that typically contain elevated electric fields, namely, those that somewhere contained electric fields greater than 3 kV/m. Merceret, *supra,* at 2–6. The FAA concludes from this analysis that launches more than 3 nautical miles from anvil and debris clouds are unlikely to trigger lightning because it is extremely remote for the electric field to reach a magnitude of 3 kV/m at distances more than 3 nautical miles from these clouds.

However, this analysis uses an unconventional technique for extreme value analysis. Gaussian analysis is not typically used to determine the likelihood of a quantity that is relatively far from any of the observed quantities. Therefore, the LAP also performed a second statistical analysis. Dye et al., *supra,* at 4–5.

The LAP used a second statistical method to determine the probability of the electric field magnitude exceeding 3 kV/m at various distances from the anvil and debris clouds in increments of 0.6 kilometers (0.32 nautical miles) and again found it extremely unlikely. O'Brien & Walterscheid, *supra,* at 7. Gaussian distributions are not necessarily well suited to extrapolating fits to the wings of a frequency distribution where the event frequency (in this case the frequency of fields exceeding 3 kV/m) is very small. A widely used function for extreme value estimation is the Weibull function. For each distance increment from the clouds, a 2-parameter Weibull distribution was a good statistical fit for the data. Extrapolating the tail of the Weibull shows how likely it would be at each increment to encounter an electric field with a magnitude greater than 3 kV/m. Even at 0.6 kilometers (0.32 nautical miles) from the cloud's edge, the probability of exceeding 3 kV/m was on the order of 10^{-9}. If only clouds containing an electric field of over 3 kV/m were considered, the calculated probability was somewhat lower, but this is most likely a statistical artifact relating to sample size. At 5.4 kilometers (2.9 nautical miles), the probability was under 10^{-16} even if only clouds containing an electric field of over 3 kV/m were considered. O'Brien & Walterscheid, *supra,* at 7.

Therefore, the FAA concludes that the risk of encountering electric field magnitudes greater than 3 kV/m is very small if the flight path is more than 3 nautical miles from the edge of an anvil or debris cloud. In fact, the Weibull fit analysis indicates that a launch would not likely encounter a field of 3 kV/m even if the flight path was at 0.32 nautical miles from the cloud's edge, so the requirements to wait or satisfy the VAHIRR criteria on launches with flight paths more than 3 nautical miles from a cloud's edge are not necessary.

iv. Reduced Restrictions on Launches With a Flight Path Within 3 Nautical Miles of a Debris Cloud

Analysis of the ABFM–II data has also demonstrated that satisfying the VAHIRR criteria can allow greater launch opportunities near a non-transparent debris cloud that has discharged lightning. This change expands launch availability because at any distance from a cloud the regulations permit flight if the conditions satisfy the VAHIRR and temperature restrictions. For a flight path through a non-transparent debris cloud under old section G417.13(a), a launch operator must wait 3 hours after detachment or a lightning discharge without exception. New section G417.13(a) requires a launch operator to wait 3 hours only if the operator cannot demonstrate that the VAHIRR is below 10 dBZ-km (+33 dBZ-kft) and that every portion of the non-transparent debris cloud at a slant distance within 5 nautical miles of the flight path is at altitudes where the cloud has temperatures of less than 0 degrees Celsius.

For flight paths between 0 and 3 nautical miles from the debris cloud, the current section G417.13(b) requires waiting 3 hours unless the launch meets three conditions:

1. There is at least one working field mill within 5 nautical miles of the cloud,

2. The magnitude of the electric field measurements has been less than 1 kV/m for 15 minutes within 5 nautical miles of the cloud, and

3. The maximum radar reflectivity has been less than 10 dBZ for 15 minutes within 5 nautical miles of the cloud.

The new requirements still allow the fulfillment of these three conditions as a method to avoid waiting the 3-hour period, but will also allow earlier flight if the operator meets the VAHIRR exception, and if every portion of the debris cloud at a slant distance within 5 nautical miles of the flight path is at altitudes where the cloud has temperatures of less than 0 degrees Celsius.

A VAHIRR measurement of less than 10 dBZ-km (or approximately 33 dBZ-kft), along with satisfactory field mill measurements and temperatures, means that a debris cloud does not contain an elevated electric field, even if portions of it are located at an altitude conducive to the creation of an electric charge. In fact, the VAHIRR method may be even more reliable when applied to non-transparent debris clouds than to anvil clouds. To demonstrate this, the LAP used a Weibull distribution to show that the upper bound of the 95-percent-confidence-interval for the probability of the electric field exceeding 3 kV/m if the VAHIRR measurement is between 5 and 15 dBZ-km is on the order of 10^{-5} for debris clouds, as opposed to 10^{-2} for anvil clouds. The expected value of the probability of exceeding 3 kV/m is much less. A more detailed examination demonstrated that the expected value of the probability of exceeding 3 kV/m for anvil clouds is 10^{-4} if the VAHIRR is less than 10 dBZ-km, so the probability of exceeding 3 kV/m for debris clouds is probably even lower than 10^{-5} if the VAHIRR is less than 10 dBZ-km. Dye et al., *supra,* 4–5. Therefore, the FAA has concluded that it is appropriate to extend the availability of the VAHIRR exception to waiting to launch to debris clouds.

2. Changes for Launches With a Flight Path Within Three Nautical Miles of an Attached Anvil Cloud

For flight paths within 3 nautical miles of a cold, non-transparent anvil cloud, the FAA will now permit flight within 30 minutes of a lightning discharge when temperature and VAHIRR readings satisfy the regulatory criteria. Therefore, for flight paths between 0 and 3 nautical miles from a cloud, the new section G417.9(c) allows launch at any time if the VAHIRR is below 10 dBZ-km and every portion of the anvil cloud at a slant distance within 5 nautical miles of the flight path is at altitudes where the non-transparent cloud has temperatures of less than 0 degrees Celsius. The old rule requires waiting for 30 minutes after lightning discharge if not passing through the non-transparent cloud (current G417.9(a) and (b)) or 3 hours after lightning discharge if passing through the non-transparent cloud (current G417.9(c)) unless VAHIRR and temperature at altitude conditions are

met. The new requirements will allow VAHIRR and the temperature at altitude conditions to always be an alternative to having to wait after a lightning discharge. For detached non-transparent anvil clouds, the requirements remain the same for flight paths less than or equal to 3 nautical miles except that now a launch operator can pass within 3 nautical miles of the non-transparent cloud within 30 minutes of a lightning discharge if the VAHIRR is below 10 dBZ-km and every portion of the non-transparent cloud at a slant distance within 5 nautical miles of the flight path is at altitudes where the cloud has temperatures of less than 0 degrees Celsius. This change is contained in G417.11(c)(1). This change is possible because the studies of the ABFM–II campaign show, as discussed above, that electric fields greater than 3 kv/m do not extend as far and the decay rate is much more rapid near the anvil edge [6] than previously believed. Cloud charges decay in time in the absence of active charge generation and, real-time radar reflectivity readings and calculations may be used to confirm that the electric field has, in fact, subsided to acceptable levels.

The FAA will not require a launch operator to wait 30 minutes when temperature and VAHIRR readings satisfy the criteria for attached and detached non-transparent anvil clouds when the flight path is between 0 and 3 nautical miles. As described above, statistical analysis of the ABFM II measurements for all anvils shows that, even for highly electrified anvils with electric fields much greater than 3 kV/m inside the cloud, the electric field outside of the anvil cloud falls off very rapidly and once falling to low levels remains small at greater distances. O'Brien. et. al. at 9. For attached and detached non-transparent anvil clouds and debris clouds, when the electric field is strong, namely, when it exceeds 3 kV/m, the radar reflectivity in the same location over the ABFM II data set is invariably greater than approximately 10 dBZ. As noted, the Weibull distribution and extreme value analysis for anvil and debris clouds showed that, when VAHIRR is ≤ 10 dBZ-km, the probability of having electric fields in excess of 3 Kv/m is very small (on the order of 10^{-4} or lower). Based on these results, the FAA finds that a launch that meets the VAHIRR criterion obviates concerns regarding electric fields in excess of 3 kV/m. Strong electric fields are known to occur in the melting zone of many precipitating layer clouds.[7] Satisfaction of the temperature requirement ensures that this type of electric charging within the melting zone will not occur.

3. Codification of Measurement Criteria

New section G417.25 represents a codification of three different sets of measurement specifications. Section G417.25(a) contains requirements for accurate and reliable radar reflectivity measurements that qualify for use throughout the other sections of this appendix. In addition to VAHIRR calculations, such uses include all radar measurements of the location, spatial extent, and intensity of clouds and precipitation. Such specifications are currently applied by the U.S. Air Force and NASA at the Federal ranges and can also be met by correct application of data from the national Next-Generation Radar (NEXRAD) network.[8] If the available radar does not meet these requirements, a launch operator must fall back on visual and other observations to convincingly demonstrate that the rules are not violated.

Section G417.25(b) applies specifically to VAHIRR calculations and explains how valid VAHIRR measurements must be made. These specifications are the same as those used during the ABFM II of 2000 and 2001 from which a safe VAHIRR threshold of ≤10 dBZ-km was statistically determined for anvil and debris clouds. Because there is no guarantee that this threshold would be safe if VAHIRR were calculated operationally in a different way, the FAA is codifying these specifications here. See below, however, for an alternative calculation that is currently in use by the U.S. Air Force and NASA at the Eastern Range and that satisfies section G417.1(c) by being at least as safe as the FAA's requirements.

Finally, section G417.25(c) specifies the measurement techniques for electric fields to qualify for use in this appendix. Again, these are the specifications currently used by the federal launch ranges.

Section G417.25(a) requires that a licensee who relies on radar reflectivity measurements, including the calculation of VAHIRR, to increase launch availability must satisfy a number of requirements. The Federal launch ranges satisfy the requirements of paragraph (a) of this section because they employ meteorological radar,[9] and they ensure that—

(1) The radar wavelength is greater than or equal to 5 centimeters in order that attenuation by intervening clouds and/or precipitation not be significant; [10]

(2) Any reflectivity measurement is of a meteorological target, such as a cloud or precipitation, and not of some other objects, such as birds or insects, nor due to "anomalous propagation"; [11]

(3) The spatial accuracy and resolution of a reflectivity measurement is one kilometer or better in order that the locations and spatial extent of clouds—especially their critical altitudes and thicknesses—and of precipitation can be determined with sufficient accuracy for use in this appendix; [12]

(4) Any attenuation caused by precipitation or an accumulation of water or ice on the radome that protects the radar antenna is less than or equal to 1 dBZ because the requirements in this appendix can be met only with that degree of accuracy; [13] and

(5) A reflectivity measurement contains no portion of the cone of silence or other blocked out portion so that it is not giving a bogus indication.[14]

A launch operator who relies on VAHIRR to increase launch availability under this appendix must satisfy the requirements of both sections G417.25(a) and (b), or must otherwise ensure that its estimates of VAHIRR are at least as large as those that would result from section G417.25(b) to ensure that its invocation of any VAHIRR exceptions to these rules are at least as safe. The current requirements for calculating VAHIRR at the Federal launch ranges satisfy section G417.1(c) because they are more conservative, even though there are certain requirements of section G417.25(b) that they do not satisfy. The Federal launch ranges do not, as required by paragraph (b)(1), ensure that a digital signal processor provide radar reflectivity measurements on a three-dimensional

[6] Dye, J. E., *et al.* (2007), Electric fields, cloud microphysics, and reflectivity in anvils of Florida thunderstorms. J. Geophys. Res., 112, D11215, doi:10.1029/2006JD007550.

[7] *Rationales for Lightning Criteria,* at 123.

[8] NEXRAD is a network of 159 high-resolution Doppler weather radars operated by the National Weather Service, an agency of the National Oceanic and Atmospheric Administration (NOAA) within the United States Department of Commerce.

[9] The Federal launch ranges employ meteorological radars because other radars do not provide sufficient granularity in depicting reflectivity on a gridded representation.

[10] The radar used at the Eastern and Western Ranges is WSR–88D and WSR–74C. They meet this criterion.

[11] 45th Weather Squadron, Steps for Evaluating VAHIRR, par. 6 (March 2005.

[12] Blakeslee, R.J., H.J. Christian, and B. Vonnegut (1989), Electrical measurements over thunderstorms, J. Geophys. Res., 94, 135–140.

[13] 45th Weather Squadron, Steps for Evaluating VAHIRR, Par. 2, (March 2005).

[14] *A History of the Lightning Criteria,* 124, par. 25.

Cartesian grid having a maximum grid-point-to-grid-point spacing of one kilometer in each of the three dimensions. The ranges do, as required by paragraph (b)(2), ensure that the specified volume is bounded in the horizontal by vertical plane, perpendicular sides located 5.5 kilometers (3 nautical miles) north, east, south, and west of the point where VAHIRR is to be evaluated; on the bottom by the 0 degree Celsius level; and on the top by an altitude of 18 kilometers.[15] Note that the specified volume need not contain the VAHIRR evaluation point, which may be either below the lower boundary of that volume (as when the vehicle is on the launch pad) or above the upper boundary (as when the vehicle is flying high above an anvil cloud) of the specified volume.

To calculate VAHIRR a launch operator must compute both a volume averaged radar reflectivity and an average cloud thickness in a specified volume before multiplying them to obtain a value for VAHIRR. Neither of these quantities is available yet as an output product of the WSR–88D.[16] or WSR–74C radar systems that the Federal ranges use to support commercial launches.[17] Instead, the Federal ranges and NASA rely on Interim Instructions [18] for computing these quantities, which are more conservative and, thus, afford less launch availability than allowed by section G417.25(b).

Paragraph (c) of section G417.25 requires a launch operator who measures an electric field to comply with this appendix to—

- Employ a ground-based field mill in order to obtain a reliable and easily calibrated measurement with a relatively low-maintenance instrument;
- Use only the one-minute arithmetic average of the instantaneous readings from that field mill to minimize the effects of local space charge and lightning field changes;
- Ensure that all field mills are calibrated so that the polarity of the electric field measurements is the same as the polarity of a voltage placed on a test plate above the sensor as discussed in more detail below;
- Ensure that the altitude of the flight path of the launch vehicle is equal to or less than 20 kilometers (66 thousand feet) everywhere above a horizontal circle of 5 nautical miles centered on the field mill being used as discussed further below, and
- Use only direct measurements from a field mill. A launch operator may not interpolate based on electric-field contours because interpolation schemes are highly variable and can give unexpected results.

The Federal launch ranges use electric field mills that satisfy each of the requirements of paragraph (c) of section G417.25. Accordingly, no new methodology is being codified here.

Regarding the polarity of an electric field measurement, note that the required polarity is the opposite of the so-called "physics sign convention" that is now used almost exclusively in the atmospheric electricity literature. This older sign convention is retained here, however, because it has been in exclusive use at the Kennedy Space Center and the Eastern Range since the early days of the Launch Pad Lightning Warning System and it remains in use today.

The FAA is relaxing the requirements for field measurement by limiting the altitude of the flight path of the launch vehicle to less than 20 kilometers (66 thousand feet) everywhere above a horizontal circle of 5 nautical miles centered on the field mill. Electric field measurements above 20 kilometers are to be ignored.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

IV. Regulatory Analyses

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that this final rule has no new additional burden to respondents over and above that which the Office of Management and Budget already approved under the existing rule titled, "Commercial Space Transportation Licensing Regulations" (OMB 2120–0608).

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Regulatory Flexibility Determination

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency may propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies developing standards to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this direct final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a detailed evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this direct final rule. The reasoning for this determination follows. Note that the following discussion represents a gross simplification of the new requirements and that there is no safe substitute for reading the rules themselves.

These changes are being made because studies and data that were not available when the current regulations

[15] *Id.*

[16] Technical name for NEXRAD is WSR–88D, which stands for Weather Surveillance Radar, 1988, Doppler.

[17] *A History of the Lightning Criteria,* 124, par. J.

[18] *Id.* (describing the interim methodology).

were established have led the FAA to conclude that the intended level of safety can be maintained with fewer constraints on launch through and near anvil and debris clouds.

The FAA concluded from studies that a launch vehicle will not trigger lightning in a steady electric field with a magnitude of less than 3 kV/m. Furthermore, the Lightning Advisory Panel performed analyses which support the conclusion that the possibility of encountering electric field magnitudes of more than 3 kV/m is very small if the flight path is more than 3 nautical miles from an anvil or debris cloud's edge, provided that all other sections of Appendix G are also satisfied. Furthermore, quantitative studies from the LAP indicate that, if the VAHIRR is less than 10 dBZ-km (about 33 dBZ-kft), the probability of an electric field of greater than 3 kV/m occurring is less than 1 in 10,000 under these conditions.

With this rule, launch initiation may occur sooner and certainly no later than under current regulations. There will be fewer constraints on launch initiation because in some situations, fewer conditions will be needed to meet criteria for launch initiation and in other situations; alternative conditions that meet prescribed criteria will be accepted for launch initiation. Therefore, the rule will increase launch availability and likely decrease costs.

The direct final rule adds a section (G417.25) which describes the methods for calculating the VAHIRR currently accepted by the FAA. These precise methods are not prescribed in the current Code of Federal Regulations. The direct final rule codifies VAHIRR calculation methods and recognizes as acceptable the method used by the federal launch ranges, and therefore increases clarity. The direct final rule also reorganizes rule language and adds and changes definitions to enhance clarity of the rule language.

Since this direct final rule will be cost relieving without degrading safety, a regulatory evaluation was not prepared. FAA has, therefore, determined that this direct final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This direct final rule is cost relieving, and thus is not expected to have a significant economic impact. Therefore as FAA Administrator, I certify this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has found no comparable international standards. The FAA has assessed the potential effect of this direct final rule and determined that it will have only a domestic impact and therefore no affect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $140.8 million in lieu of $100 million. This direct final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d, governing rulemakings such as this, and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 417

Space Safety, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14 Code of Federal Regulations as follows:

PART 417—LAUNCH SAFETY

■ 1. The authority citation for part 417 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Revise Appendix G to read as follows:

Appendix G to Part 417—Natural and Triggered Lightning Flight Commit Criteria

G417.1 General

This appendix provides flight commit criteria for mitigating against natural lightning strikes and lightning triggered by the flight of a launch vehicle through or near an electrified environment. A launch operator may not initiate flight unless the weather conditions at the time of launch satisfy all lightning flight commit criteria of this appendix.

(a) In order to meet the lightning flight commit criteria, a launch operator must employ any:

(1) Weather monitoring and measuring equipment needed, and

(2) Procedures needed to verify compliance.

(b) When equipment or procedures, such as a field mill or calculation of the volume-averaged, height-integrated radar reflectivity (VAHIRR) of clouds, are used with the lightning flight commit criteria to increase launch opportunities, a launch operator must evaluate all applicable measurements to determine whether the measurements satisfy the criteria. A launch operator may not turn off available instrumentation to create the appearance of meeting a requirement and must use all radar reflectivity measurements within a specified volume for a VAHIRR calculation.

(c) If a launch operator proposes any alternative lightning flight commit criteria, the launch operator must clearly and convincingly demonstrate that the alternative provides an equivalent level of safety to that required by this appendix.

G417.3 Definitions

For the purpose of this appendix:

Anvil cloud means a stratiform or fibrous cloud formed by the upper-level outflow or blow-off from a thunderstorm or convective cloud.

Associated means two or more clouds are caused by the same disturbed weather or are physically connected.

Bright band means an enhancement of radar reflectivity caused by frozen hydrometeors falling and beginning to melt at any altitude where the temperature is 0 degrees Celsius or warmer.

Cloud means a visible mass of suspended water droplets or ice crystals, or a combination of water droplets and ice crystals. The cloud is the entire volume containing such particles.

Cloud layer means a vertically continuous array of clouds, not necessarily of the same type, whose bases are approximately at the same altitude.

Cone of silence means the volume within which a radar cannot detect any object, and is an inverted circular cone centered on the radar antenna. A cone of silence consists of all elevation angles greater than the maximum elevation angle reached by the radar.

Debris cloud means any cloud, except an anvil cloud, that has become detached from a parent cumulonimbus cloud or thunderstorm, or that results from the decay of a parent cumulonimbus cloud or thunderstorm.

Disturbed weather means a weather system where a dynamical process destabilizes the air on a scale larger than the individual clouds or cells. Examples of disturbed weather include fronts, troughs, and squall lines.

Electric field means a vertical electric field (Ez) at the surface of the Earth.

Field mill means an electric-field sensor that uses a moving, grounded conductor to induce a time-varying electric charge on one or more sensing elements in proportion to the ambient electrostatic field.

Flight path means a launch vehicle's planned flight trajectory, and includes the trajectory's vertical and horizontal uncertainties resulting from all three-sigma guidance and performance deviations.

Horizontal distance means a distance that is measured horizontally between a field mill or electric field measurement point and the nearest part of the vertical projection of an object or flight path onto the surface of the Earth.

Moderate precipitation means a precipitation rate of 0.1 inches/hr or a radar reflectivity of 30 dBZ.

Non-transparent means that one or more of the following conditions apply:

(1) Objects above, including higher clouds, blue sky, and stars, are blurred, indistinct, or obscured when viewed from below when looking through a cloud at visible wavelengths; or objects below, including terrain, buildings, and lights on the ground, are blurred, indistinct, or obscured when viewed from above when looking through a cloud at visible wavelengths;

(2) Objects above an observer are seen distinctly only through breaks in a cloud; or

(3) The cloud has a radar reflectivity of 0 dBZ or greater.

Precipitation means detectable rain, snow, hail, graupel, or sleet at the ground; virga; or a radar reflectivity greater than 18 dBZ.

Radar reflectivity means the radar reflectivity factor due to hydrometeors, in dBZ.

Slant distance means the shortest distance between two ports, whether horizontal, vertical, or inclined, in three dimensional space.

Thick cloud layer means one or more cloud layers whose combined vertical extent from the base of the bottom cloud layer to the top of the uppermost cloud layer exceeds 4,500 feet. Cloud layers are combined with neighboring layers for determining total thickness only when they are physically connected by vertically continuous clouds.

Thunderstorm means any convective cloud that produces lightning.

Transparent means that any of the following conditions apply:

(1) Objects above, including higher clouds, blue sky, and stars, are not blurred, are distinct and are not obscured when viewed at visible wavelengths; or objects below, including terrain, buildings, and lights on the ground, are clear, distinct, and not obscured when viewed at visible wavelengths; (2) Objects identified in paragraph (1) of this definition are seen distinctly not only through breaks in a cloud; and (3) The cloud has a radar reflectivity of less than 0 dBZ.

Triboelectrification means the transfer of electrical charge between ice particles and a launch vehicle when the ice particles collide with the vehicle during flight.

Volume-averaged, height integrated radar reflectivity (VAHIRR) means the product, expressed in units of dBZ-km or dBZ-kft, of a volume-averaged radar reflectivity and an average cloud thickness in a specified volume corresponding to a point.

G417.5 Lightning

(a) A launch operator must wait 30 minutes to initiate flight after any type of lightning occurs in a thunderstorm if the flight path will carry the launch vehicle at a slant distance of less than or equal to 10 nautical miles from that thunderstorm. This paragraph does not apply to an anvil cloud that is attached to a parent thunderstorm.

(b) A launch operator must wait 30 minutes to initiate flight after any type of lightning occurs at a slant distance of less than or equal to 10 nautical miles from the flight path, unless:

(1) The non-transparent part of the cloud that produced the lightning is at a slant distance of greater than 10 nautical miles from the flight path;

(2) There is at least one working field mill at a horizontal distance of less than or equal to 5 nautical miles from each such lightning discharge; and

(3) The absolute values of all electric field measurements at a horizontal distance of less than or equal to 5 nautical miles from the flight path and at each field mill specified in paragraph (b)(2) of this section have been less than 1000 volts/meter for at least 15 minutes.

G417.7 Cumulus Clouds

(a) This section applies to non-transparent cumulus clouds, except for cirrocumulus, altocumulus, or stratocumulus clouds. This section does not apply to an anvil cloud that is attached to a parent cumulus cloud.

(b) A launch operator may not initiate flight if the slant distance to the flight path is less than or equal to 10 nautical miles from any cumulus cloud that has a top at an altitude where the temperature is colder than or equal to −20 degrees Celsius.

(c) A launch operator may not initiate flight if the slant distance to the flight path is less than or equal to 5 nautical miles from any cumulus cloud that has a top at an altitude where the temperature is colder than or equal to −10 degrees Celsius.

(d) A launch operator may not initiate flight if the flight path will carry the launch vehicle through any cumulus cloud with its

top at an altitude where the temperature is colder than or equal to −5 degrees Celsius.

(e) A launch operator may not initiate flight if the flight path will carry the launch vehicle through any cumulus cloud that has a top at an altitude where the temperature is colder than or equal to +5, and warmer than −5 degrees Celsius unless:

(1) The cloud is not producing precipitation;

(2) The horizontal distance from the center of the cloud top to at least one working field mill is less than 2 nautical miles; and

(3) All electric field measurements at a horizontal distance of less than or equal to 5 nautical miles of the flight path and at each field mill specified in paragraph (e)(2) of this section have been between −100 volts/meter and +500 volts/meter for at least 15 minutes.

G417.9 Attached Anvil Clouds

(a) This section applies to any non-transparent anvil cloud formed from a parent cloud that has a top at an altitude where the temperature is colder than or equal to −10 degrees Celsius.

(b) Flight path through cloud: If a flight path will carry a launch vehicle through any attached anvil cloud, the launch operator may not initiate flight unless:

(1) The portion of the attached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(2) The volume-averaged, height-integrated radar reflectivity is less than +10 dBZ-km (+33 dBZ-kft) at every point at a slant distance of less than or equal to 1 nautical mile from the flight path.

(c) Flight path between 0 and 3 nautical miles from cloud: If a flight path will carry a launch vehicle at a slant distance of greater than 0, but less than or equal to 3, nautical miles from any attached anvil cloud, a launch operator must wait 3 hours to initiate flight after a lightning discharge in or from the parent cloud or anvil cloud, unless:

(1) The portion of the attached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(2) The volume-averaged, height-integrated radar reflectivity is less than +10 dBZ-km (+33 dBZ-kft) at every point at a slant distance of less than or equal to 1 nautical mile from the flight path.

(d) Flight path between 3 and 5 nautical miles from cloud: If a flight path will carry a launch vehicle at a slant distance of greater than 3 and less than or equal to 5 nautical miles from any attached anvil cloud, a launch operator must wait 3 hours to initiate flight after every lightning discharge in or from the parent cloud or anvil cloud, unless the portion of the attached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius.

(e) Flight path between 5 and 10 nautical miles from cloud: If the flight path will carry the launch vehicle at a slant distance of greater than 5 and less than or equal to 10 nautical miles from any attached anvil cloud, the launch operator must wait to initiate flight for 30 minutes after every lightning discharge in or from the parent cloud or anvil cloud, unless the portion of the attached anvil cloud at a slant distance of less than or equal to 10 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius.

G417.11 Detached Anvil Clouds

(a) This section applies to any non-transparent anvil cloud formed from a parent cloud that had a top at an altitude where the temperature was colder than or equal to −10 degrees Celsius.

(b) Flight path through cloud: If the flight path will carry the launch vehicle through a detached anvil cloud, the launch operator may not initiate flight unless:

(1) The launch operator waits 4 hours after every lightning discharge in or from the detached anvil cloud; and observation shows that 3 hours have passed since the anvil cloud detached from the parent cloud; or

(2) Each of the following conditions exists:

(i) Any portion of the detached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(ii) The VAHIRR is less than +10 dBZ-km (+33 dBZ-kft) everywhere in the flight path.

(c) Flight path between 0 and 3 nautical miles from cloud: If a flight path will carry a launch vehicle at a slant distance of greater than 0 and less than or equal to 3 nautical miles from a detached anvil cloud, the launch operator must accomplish both of the following:

(1) Wait 30 minutes to initiate flight after every lightning discharge in or from the parent cloud or anvil cloud before detachment of the anvil cloud, and after every lightning discharge in or from the detached anvil cloud after detachment, unless:

(i) The portion of the detached anvil cloud less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(ii) The VAHIRR is less than +10 dBZ-km (+33 dBZ-kft) at every point at a slant distance of less than or equal to 1 nautical mile from the flight path; and

(2) If a launch operator is unable to initiate flight in the first 30 minutes under paragraph (c)(1) of this section, the launch operator must wait to initiate flight for 3 hours after every lightning discharge in or from the parent cloud or anvil cloud before detachment of the anvil cloud, and after every lightning discharge in or from the detached anvil cloud after detachment, unless:

(i) All of the following are true:

(A) There is at least one working field mill at a horizontal distance of less than or equal to 5 nautical miles from the detached anvil cloud;

(B) The absolute values of all electric field measurements at a horizontal distance of less than or equal to 5 nautical miles from the flight path and at each field mill specified in paragraph (c)(2)(i)(A) of this section have been less than 1000 V/m for at least 15 minutes; and

(C) The maximum radar reflectivity from any part of the detached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path has been less than +10 dBZ for at least 15 minutes; or

(ii) Both of the following are true:

(A) The portion of the detached anvil cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(B) The volume-averaged, height-integrated radar reflectivity is less than +10 dBZ-km (+33 dBZ-kft) at every point at a slant distance of less than or equal to 1 nautical mile from the flight path.

(d) Flight path between 3 and 10 nautical miles from cloud: If a flight path will carry a launch vehicle at a slant distance of greater than 3 and less than or equal to 10 nautical miles from a detached anvil cloud, the launch operator must wait 30 minutes to initiate flight after every lightning discharge in or from the parent cloud or anvil cloud before detachment, and after every lightning discharge in or from the detached anvil cloud after detachment, unless the portion of the detached anvil cloud at a slant distance of less than or equal to 10 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius.

G417.13 Debris Clouds

(a) This section applies to any non-transparent debris cloud whose parent cumuliform cloud has had any part at an altitude where the temperature was colder than −20 degrees Celsius or to any debris cloud formed by a thunderstorm. This section does not apply to a detached anvil cloud.

(b) A launch operator must calculate a "3-hour period" as starting at the latest of the following times:

(1) The debris cloud is observed to be detached from the parent cloud;

(2) The debris cloud is observed to have formed by the collapse of the parent cloud top to an altitude where the temperature is warmer than −10 degrees Celsius; or

(3) Any lightning discharge occurs in or from the debris cloud.

(c) Flight path through cloud: If a flight path will carry a launch vehicle through a debris cloud, the launch operator may not initiate flight during the "3-hour period," of paragraph (b) of this section, unless:

(1) The portion of the debris cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(2) The VAHIRR is less than +10 dBZ-km (+33 dBZ-kft) everywhere in the flight path.

(d) Flight path between 0 and 3 nautical miles from cloud: If the flight path will carry the launch vehicle at a slant distance of greater than or equal to 0 and less than or equal to 3 nautical miles from the debris cloud, the launch operator may not initiate flight during the "3-hour period," unless one of the following applies:

(1) A launch operator may initiate flight during the "3-hour period," of paragraph (b) of this section if:

(i) There is at least one working field mill at a horizontal distance of less than or equal to 5 nautical miles from the debris cloud;

(ii) The absolute values of all electric field measurements at a horizontal distance of less than or equal to 5 nautical miles from the flight path and at each field mill specified in paragraph (d)(1)(i) of this section have been less than 1000 volts/meter for at least 15 minutes; and

(ii) The maximum radar reflectivity from any part of the debris cloud less than or equal to a slant distance of 5 nautical miles from the flight path has been less than +10 dBZ for at least 15 minutes; or

(2) A launch operator may initiate flight during the "3-hour period," of paragraph (b) of this section if:

(i) The portion of the debris cloud at a slant distance of less than or equal to 5 nautical miles from the flight path is located entirely at altitudes where the temperature is colder than 0 degrees Celsius; and

(ii) The VAHIRR is less than + 10 dBZ-km (+33 dBZ-kft) at every point at a slant distance of less than or equal to 1 nautical mile from the flight path.

G417.15 Disturbed Weather

A launch operator may not initiate flight if the flight path will carry the launch vehicle through a non-transparent cloud associated with disturbed weather that has clouds with tops at altitudes where the temperature is colder than 0 degrees Celsius and that contains, at a slant distance of less than or equal to 5 nautical miles from the flight path, either:

(a) Moderate or greater precipitation; or

(b) Evidence of melting precipitation such as a radar bright band.

G417.17 Thick Cloud Layers

(a) This section does not apply to either attached or detached anvil clouds.

(b) A launch operator may not initiate flight if the flight path will carry the launch vehicle through a non-transparent cloud layer that is:

(1) Greater than or equal to 4,500 feet thick and any part of the cloud layer in the flight path is located at an altitude where the temperature is between 0 degrees Celsius and −20 degrees Celsius, inclusive; or

(2) Connected to a thick cloud layer that, at a slant distance of less than or equal to 5 nautical miles from the flight path, is greater than or equal to 4,500 feet thick and has any part located at any altitude where the temperature is between 0 degrees Celsius and −20 degrees Celsius, inclusive.

(c) A launch operator may initiate flight despite paragraphs (a)(1) and (a)(2) of this section if the thick cloud layer:

(1) Is a cirriform cloud layer that has never been associated with convective clouds,

(2) Is located entirely at altitudes where the temperature is colder than or equal to −15 degrees Celsius, and

(3) Shows no evidence of containing liquid water.

G417.19 Smoke Plumes

(a) A launch operator may not initiate flight if the flight path will carry the launch vehicle through any non-transparent cumulus cloud that has developed from a smoke plume while the cloud is attached to the smoke plume, or for the first 60 minutes after the cumulus cloud is observed to be detached from the smoke plume.

(b) This section does not apply to non-transparent cumulus clouds that have formed above a fire but have been detached from the smoke plume for more than 60 minutes. Section G417.7 applies.

G417.21 Surface Electric Fields

(a) A launch operator must wait 15 minutes to initiate flight after the absolute value of any electric field measurement at a horizontal distance of less than or equal to 5 nautical miles from the flight path has been greater than or equal to 1500 volts/meter.

(b) A launch operator must wait 15 minutes to initiate flight after the absolute value of any electric field measurement at a horizontal distance of less than or equal to 5 nautical miles from the flight path has been greater than or equal to 1000 volts/meter, unless:

(1) All clouds at a slant distance of less than or equal to 10 nautical miles from the flight path are transparent; or

(2) All non-transparent clouds at a slant distance less than or equal to 10 nautical miles from the flight path:

(i) Have tops at altitudes where the temperature is warmer than or equal to +5 degrees Celsius, and

(ii) Have not been part of convective clouds with cloud tops at altitudes where the temperature was colder than or equal to −10 degrees Celsius for 3 hours.

G417.23 Triboelectrification

(a) A launch operator may not initiate flight if the flight path will carry the launch vehicle through any part of a cloud at any altitude where:

(1) The temperature is colder than or equal to −10 degrees Celsius; and

(2) The launch vehicle's velocity is less than or equal to 3000 feet/second,

(b) Paragraph (a) of this section does not apply if either:

(1) The launch vehicle is treated for surface electrification so that:

(i) All surfaces of the launch vehicle susceptible to ice particle impact are such that the surface resistivity is less than 10^9 Ohms per square; and

(ii) All conductors on surfaces, including dielectric surfaces that have been coated with conductive materials, are bonded to the launch vehicle by a resistance that is less than 10^5 ohms; or

(2) A launch operator demonstrates by test or analysis that electrostatic discharges on the surface of the launch vehicle caused by triboelectrification will not be hazardous to the launch vehicle or the spacecraft.

G417.25 Measurement of Cloud Radar Reflectivity, Computation of VAHIRR, and Measurement of Electric Field

(a) *Radar reflectivity measurement.* A launch operator who measures radar reflectivity to comply with this appendix must employ a meteorological radar and ensure that—

(1) The radar wavelength is greater than or equal to 5 cm;

(2) A reflectivity measurement is due to a meteorological target;

(3) The spatial accuracy and resolution of a reflectivity measurement is 1 kilometer or better;

(4) Any attenuation caused by intervening precipitation or by an accumulation of water or ice on the radome is less than or equal to 1 dBZ; and

(5) A reflectivity measurement contains no portion of the cone of silence above the radar antenna, nor any portion of any sector that is blocked out for payload safety reasons.

(b) *Computation of VAHIRR.* A launch operator who measures VAHIRR to comply with this appendix must ensure that—

(1) A digital signal processor provides radar reflectivity measurements on a three-dimensional Cartesian grid having a maximum grid-point-to-grid-point spacing of one kilometer in each of the three dimensions;

(2) The specified volume is the volume bounded in the horizontal by vertical, plane, perpendicular sides located 5.5 kilometers (3 nautical miles) north, east, south, and west of the point where VAHIRR is to be evaluated; on the bottom by the 0 degree Celsius level; and on the top by an altitude of 20 kilometers;

(3) Volume-averaged radar reflectivity is the arithmetic average of the radar reflectivity measurements in dBZ at grid points within the specified volume. A launch operator must include each grid point within the specified volume in the average if and only if that grid point has a radar reflectivity measurement equal to or greater than 0 dBZ. If fewer than 10% of the grid points in the specified volume have radar reflectivity measurements equal to or greater than 0 dBZ, then the volume-averaged radar reflectivity is either the maximum radar reflectivity measurement in the specified volume, or 0 dBZ, whichever is greater.

(4) Average cloud thickness is the difference in kilometers or thousands of feet between an average top and an average base of all clouds in the specified volume, computed as follows:

(i) The cloud base to be averaged is the higher, at each horizontal position, of either

(A) The 0 degree Celsius altitude, or

(B) The lowest altitude of all radar reflectivity measurements of 0 dBZ or greater.

(ii) The cloud top to be averaged is the highest altitude of all radar reflectivity measurements of 0 dBZ or greater at each horizontal position.

(iii) A launch operator must—

(A) Take the cloud base at any horizontal position as the altitude of the corresponding base grid point minus half of the grid-point vertical separation;

(B) Take the cloud top at that horizontal position as the altitude of the corresponding top grid point plus half of this vertical separation.

(5) All VAHIRR-evaluation points in the flight path itself are:

(i) Greater than a slant distance of 10 nautical miles from any radar reflectivity of 35 dBZ or greater at altitudes of 4 kilometers or greater above mean sea level; and

(ii) Greater than a slant distance of 10 nautical miles from any type of lightning that has occurred in the previous 5 minutes.

(iii) A launch operator need not apply paragraph (b)(5) of this section to VAHIRR evaluation points outside the flight path but within one nautical mile of the flight path.

(6) VAHIRR is the product, expressed in units of dBZ-km or dBZ-kft, of the volume-averaged radar reflectivity defined in paragraph (b)(3) of this section and the average cloud thickness defined in paragraph (b)(4) of this section in the specified volume defined in paragraph (b)(2) of this section.

(c) *Electric field measurement.* A launch operator who measures an electric field to comply with this appendix must—

(1) Employ a ground-based field mill,

(2) Use only the one-minute arithmetic average of the instantaneous readings from that field mill,

(3) Ensure that all field mills are calibrated so that the polarity of the electric field measurements is the same as the polarity of a voltage placed on a test plate above the sensor,

(4) Ensure that the altitude of the flight path of the launch vehicle is equal to or less than 20 kilometers (66 thousand feet) everywhere above a horizontal circle of 5 nautical miles centered on the field mill being used,

(5) Use only direct measurements from a field mill, and

(6) Not interpolate based on electric-field contours.

Issued in Washington, DC, on May 23, 2011.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2011–14146 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0265]

RIN 1625–AA00

Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Sault Sainte Marie zone. This zone is intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone, as defined by 33 CFR 3.45–45. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. to 11 p.m. on June 23, 2011.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0265 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0265 in the "Keyword" box, and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BMC Gregory Ford, Prevention Department, Coast Guard, Sector Sault Sainte Marie, MI, telephone (906) 635–3222, email *Gregory.C.Ford@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). We received 0 public submissions commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would inhibit the Coast Guard from ensuring the safety of vessels and the public during the fireworks display.

Background and Purpose

From June 21, 2011 through June 24, 2011, the Michigan Bankers Association's will celebrate its 125th anniversary. The celebration will take place on and around Mackinac Island. On the evening of June 23, 2011, the celebration will include a fireworks display to be launched from a water location. The Captain of the Port Sault Sainte Marie has determined that the fireworks event poses various hazards to the public, including obstructions to the navigable channel, explosive dangers associated with fireworks, and debris falling into the water. To minimize these and other hazards, this rule will establish a temporary safety zone around the fireworks display.

Discussion of Comments and Changes

The Coast Guard received 0 public submissions commenting on this rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. On April 20, 2011, the Coast Guard published a notice of proposed

rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the impact to small entities by this rule. There have been no changes made to the rule as proposed. This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the area of the safety zone while it is being enforced. The safety zone will be in effect only for a short time. Furthermore, the safety zone has been designed to allow traffic to pass safely around it. Moreover, vessels will be allowed to pass through the zone at the discretion of the Captain of the Port.

Assistance for Small Entities

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of it elsewhere in this preamble. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Technical Standards

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

operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. On April 20, 2011, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, Michigan, in the **Federal Register** (76 FR 22064). The Coast Guard received 0 public submissions commenting on the proposed rule. There have been no changes made to the rule as proposed.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0265 to read as follows:

§ 165.T09–0265 Safety Zone; Michigan Bankers Association Fireworks, Lake Huron, Mackinac Island, MI.

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Huron within a 500-foot radius from the fireworks launch site, approximately 460 yards south of Biddle Point, at position 45°50'32.82″N, 084°37'03.18″W: [DATUM: NAD 83].

(b) *Effective and enforcement period.* This regulation is effective and will be enforced from 9 p.m. until 11 p.m. on June 23, 2011.

(1) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(2) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

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

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) Public vessel means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or his designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: May 18, 2011.

G. J. Paitl,

Commander, U.S. Coast Guard, Acting Captain of the Port, Sector Sault Sainte Marie.

[FR Doc. 2011–14132 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0456]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce various safety zones for annual fireworks events in the Captain of the Port Detroit zone from 9:40 p.m. on May 27, 2011 through 9:45 p.m. on September 4, 2011. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and immediately after fireworks events. This rule will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. During each enforcement period, no person or vessel may enter the respective safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.941 will be enforced at various times between June 8, 2011 until September 4, 2011.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail BM1 Tracy Girard, Response Department, U.S. Coast Guard Marine Safety Unit Toledo, 420 Madison Avenue, Toledo, OH 43604; telephone (419)–418–6036, e-mail *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zones listed in 33 CFR 165.941, Annual Fireworks Events in the Captain of the Port Detroit Zone, at the following time for the following events:

(1) § 165.941(a)(2) Washington Township Summerfest Fireworks, Toledo, OH

This safety zone will be enforced from 10 p.m. to 10:30 p.m. on June 25, 2011. In the case of inclement weather on June 25, 2011, this safety zone will be enforced from 10 p.m. until 10:30 p.m. on June 26, 2011, weather permitting.

(2) § 165.941(a)(6) Put-In-Bay Fourth of July Fireworks, Put-In- Bay, OH

This safety zone will be enforced from 9:30 p.m. to 11 p.m. on July 4, 2011. In the case of inclement weather on July 4, 2011, this safety zone will be enforced from 9:30 p.m. until 11 p.m. on July 5, 2011, weather permitting.

(3) § 165.941(a)(16) Toledo Country Club Memorial Day Fireworks, Toledo, OH

This safety zone will be enforced from 9:40 p.m. to 10 p.m. on May 27, 2011.

(4) § 165.941(a)(17) Luna Pier Fireworks Show, Luna Pier, MI

This safety zone will be enforced from 9:45 p.m. to 10:15 p.m. on July 02, 2011.

(5) § 165.941(a)(18) Toledo Country Club 4th of July Fireworks, Toledo, OH

This safety zone will be enforced from 9:40 p.m. to 10 p.m. on July 1, 2011.

(6) § 165.941(a)(19) Red, White, Kaboom Lights Up The Night Fireworks, Toledo, OH (formally known as Pharm Lights Up the Night)

This safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 3, 2011.

(7) § 165.941(a)(20) Perrysburg/Maumee 4th of July Fireworks, Perrysburg, OH

This safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 3, 2011. In the case of inclement weather on July 3, 2011, this safety zone will be enforced from 10 p.m. to 10:30 p.m. on July 5, 2011, weather permitting.

(8) § 165.941(a)(21) Lakeside July 4th Fireworks, Lakeside, OH

This safety zone will be enforced from 9:30 p.m. to 9:45 p.m. on July 4, 2011. In the case of inclement weather on July 4, 2011, this safety zone will be enforced from 9:30 p.m. to 9:45 p.m. on July 5, 2011, weather permitting.

(9) § 165.941(a)(22) Catawba Island Club Fireworks, Catawba Island, OH

This safety zone will be enforced from 9:15 p.m. to 9:45 p.m. on July 1, 2011.

(10) § 165.941(a)(23) Red, White and Blues Bang Fireworks, Huron, OH

This safety zone will be enforced from 10:30 p.m. to 10:45 p.m. on July 2, 2011.

(11) § 165.941(a)(24) Huron Riverfest Fireworks, Huron, OH

This safety zone will be enforced from 10:15 P.M. to 10:30 P.M. on July 8, 2011. In the case of inclement weather on July 8, 2011, this safety zone will be enforced from 10:15 p.m. to 10:30 p.m. on July 9, 2011, weather permitting.

(12) § 165.941(a)(25) Kelley's Island, Island Fest Fireworks, Kelley's Island, OH

This safety zone will be enforced from 9:45 p.m. to 10:15 p.m. on July 23, 2011.

(13) § 165.941(a)(28) Lakeside Labor Day Fireworks, Lakeside OH

This safety zone will be enforced from 9:15 p.m. to 9:30 p.m. on September 4, 2011.

(14) § 165.941(a)(29) Catawba Island Club Fireworks, Catawba Island, OH

This safety zone will be enforced from 9:15 p.m. to 9:45 p.m. on September 4, 2011.

Under the provisions of 33 CFR 165.23, entry into, transiting, or anchoring within any one of these safety zones is during a period of enforcement is prohibited unless authorized by the Captain of the Port Detroit or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Detroit. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Detroit on channel 16, VHF–FM. The Coast Guard will give notice to the public via the Local Notice to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.23 and 5 U.S.C. 552 (a). If the Captain of the Port determines that any of these safety zones need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: May 25, 2011.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port, Sector Detroit.

[FR Doc. 2011–14135 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0450]

RIN 1625–AA00

Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Area of Responsibility

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones in Holmes Harbor, Boston Harbor, Port Gardner, Shilshole Bay, Port Ludlow, and Spieden Island for various summer fireworks displays. The safety zones are necessary to help ensure the safety of the maritime public during the displays and will do so by prohibiting all persons and vessels from entering the safety zones unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 5 p.m. on July 3, 2011 through 1 a.m. on August 13, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0450 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0450 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail ENS Anthony P. LaBoy, Coast Guard Sector Puget Sound, Waterways Management Division; telephone 206–217–6323, e-mail *SectorPugetSoundWWM@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision

authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest in that it would inhibit the Coast Guard's ability to protect the public from the hazards associated with fireworks displays on navigable waters.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraph, a 30 day notice period would be impractical and contrary to the public interest.

Background and Purpose

Fireworks displays create hazardous conditions for the maritime public because of the large number of vessels that congregate near the displays as well as the noise, falling debris, and explosions that occur during the event. The establishment of a safety zone around displays helps to ensure the safety of the maritime public by prohibiting all persons and vessels from coming too close to the fireworks display and the associated hazards.

Discussion of Rule

This rule establishes six safety zones for the following firework displays: Freeland 3rd of July on July 3, 2011 in Holmes Harbor near Freeland, WA; Boston Harbor Fireworks on July 3, 2011 in Boston Harbor near Olympia, WA; Everett 4th of July Foundation on July 4, 2011 in Port Gardner near Everett, WA; Tenold-Jordan Wedding on July 23, 2011 in Shilshole Bay, Seattle, WA; Port Ludlow Celebration on July 30, 2011 in Port Ludlow Bay, WA; and the Barghausen's Annual Firework display on August 12, 2011 east of Green Point, Spieden Island, WA. All persons and vessels will be prohibited from entering the safety zones during the dates and times they are effective unless authorized by the Captain of the Port or his designated representative.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This rule is not a significant regulatory action because it creates safety zones that are minimal in size and short in duration.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit through the established safety zones during the times of enforcement. This rule will not have a significant economic impact on a substantial number of small entities because the temporary safety zones are minimal in size and short in duration, and maritime traffic may be permitted to transit them with permission from the Captain of the Port or his designated representative.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination

with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T13–184 to read as follows:

§ 165.T13–184 Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Area of Responsibility

(a) *Location.* The following areas are designated as safety zones:

1. *Freeland Third of July, Holmes Harbor, Freeland, WA:* All waters of Holmes Harbor encompassed within a 300 yard radius around position 48° 1.18′ N, 122° 31.88′W.

2. *Boston Harbor Fireworks, Boston Harbor, Olympia, WA:* All waters of Boston Harbor encompassed within a 200 yard radius around position 47° 08.5′ N, 122° 54.2′ W.

3. *Everett Fourth of July Foundation, Port Gardner, Everett, WA:* All waters of Port Gardner encompassed within a 300 yard radius around position 48° 00.672′ N, 122° 13.391′ W.

4. *Tenold-Jordan Wedding, Shilshole Bay, Seattle, WA:* All waters of Shilshole Bay encompassed within a 150 yard radius around position 47° 40.489′ N, 122° 24.795′ W.

5. *Port Ludlow Celebration, Port Ludlow, WA:* All waters of Port Ludlow encompassed within a 150 yard radius around position 47° 55.161′ N, 122° 41.157′ W.

6. *Barghausen's Annual Firework Display, Green Point, Spieden Island, WA:* All waters east of Spieden Island encompassed within a 350 yard radius around position 48° 37.939′ N, 123° 05.99′ W.

(b) *Regulations.* In accordance with the general regulations in 33 CFR part 165, Subpart C, no person or vessel may enter or remain in the safety zone created by this section without the permission of the Captain of the Port or his designated representative. Designated representatives are Coast Guard Personnel authorized by the Captain of the Port to grant persons or vessels permission to enter or remain in the safety zone created by this section. See 33 CFR part 165, Subpart C, for additional information and requirements.

(c) *Enforcement Period.* The safety zones created by this section will be in effect as follows:

1. *Freeland Third of July, Holmes Harbor, Freeland, WA:* 5 p.m. on July 3, 2011 until 1 a.m. on July 4, 2011.

2. *Boston Harbor Fireworks, Boston Harbor, Olympia, WA:* 5 p.m. on July 3, 2011 until 1 a.m. on July 4, 2011.

3. *Everett Fourth of July Foundation, Port Gardner, Everett, WA:* 5 p.m. July 4, 2011 until 1 a.m. on July 5, 2011.

4. *Tenold-Jordan Wedding, Shilshole Bay, Seattle, WA:* 5 p.m. on July 23, 2011 until 1 a.m. on July 24, 2011.

5. *Port Ludlow Celebration, Port Ludlow, WA:* 5 p.m. on July 30, 2011 until 1 a.m. on July 31, 2011.

6. *Barghausen's Annual Firework Display, Green Point, Spieden Island, WA:* 5 p.m. on August 12, 2011 until 1 a.m. on August 13, 2011.

Dated: May 20, 2011.

S. J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2011–14139 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0439]

RIN 1625–AA00

Safety Zones; July 4th Fireworks Displays Within the Captain of the Port Miami Zone, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones during Fourth of July fireworks events on the navigable waterways of Bal Harbour, Boynton Beach, Deerfield Beach, Delray Beach, Fort Lauderdale, Hollywood, Key Biscayne, Lauderdale by the Sea, Miami Beach, Pompano Beach, Stuart, and West Palm Beach, Florida. These safety zones are necessary to protect the public from the

hazards associated with launching fireworks over the navigable waters of the United States. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 8:30 p.m. until 9:45 p.m. on July 4, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0439 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0439 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive necessary information regarding the fireworks displays until May 16, 2011. As a result, the Coast Guard did not have sufficient time to publish an NPRM and to receive public comments prior to the fireworks displays. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to the public during the fireworks displays.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is necessary in order to restrict vessel movement and ensure maritime public safety during this fireworks display.

Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with the launching of fireworks over navigable waters of the United States.

Discussion of Rule

Multiple fireworks displays are planned for the Fourth of July celebration throughout the Captain of the Port Miami Zone. The fireworks will be launched from land, piers, or barges. Whether launched from land, pier, or barge, such fireworks will explode over navigable waters of the United States.

The Coast Guard is establishing twelve temporary safety zones for fireworks displays on July 4, 2011 within the navigable waters of the Captain of the Miami Zone. The safety zones are listed below.

1. *Bal Harbour, Florida.* All waters within a 280 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

2. *Boynton Beach, Florida.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway. This safety zone will be enforced from 8:30 p.m. until 9:30 p.m.

3. *Deerfield Beach, Florida.* All waters within a 467 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

4. *Delray Beach, Florida.* All waters within a 467 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 8:30 p.m. until 9:30 p.m.

5. *Fort Lauderdale, Florida.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:45 p.m.

6. *Hollywood, Florida.* All waters within a 467 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:45 p.m.

7. *Key Biscayne, Florida.* All waters within a 560 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay. This safety zone will be enforced from 8:30 p.m. until 9:30 p.m.

8. *Lauderdale by the Sea, Florida.* All waters within a 187 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

9. *Miami Beach, Florida.* All waters within a 280 yard radius around the area from which the fireworks will be launched, located adjacent to the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

10. *Pompano Beach, Florida.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

11. *Stuart, Florida.* All waters within a 560 yard radius around the barge from which the fireworks will be launched, located on the St. Lucie River. This safety zone will be enforced from 9 p.m. until 9:30 p.m.

12. *West Palm Beach, Florida.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway. This safety zone will be enforced from 9 p.m. until 9:45 p.m.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within any of the safety zones unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within any of the safety zones may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. The Coast Guard will provide notice of the safety zones by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

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

Executive Order 12866 and Executive Order 13563

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) Each safety zone will be enforced for a maximum of one hour; (2) vessel traffic in the areas are expected to be minimal during the enforcement period; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within any of the safety zones without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zones if authorized by the Captain of the Port Miami or a designated representative; and (5) the Coast Guard will provide advance notification of the safety zones to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within any of the safety zones described in this regulation during the respective enforcement period. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of twelve temporary safety zones to protect the public on navigable waters of the United States. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0439 to read as follows:

§ 165.T07–0439 Safety Zones; July 4th Fireworks Displays within the Captain of the Port Miami Zone, FL.

(a) *Regulated Areas.* The following regulated areas are safety zones, with the specific enforcement period for each safety zone. All coordinates are North American Datum 1983.

(1) *Bal Harbour, FL.* All waters within a 280 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 25°53′57.51″ N, 80°07′14.06″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(2) *Boynton Beach, FL.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway at approximate position 26°32′52.22″ N, 80°02′57.26″ W. This regulated area will be enforced from 8:30 p.m. until 9:30 p.m. on July 4, 2011.

(3) *Deerfield Beach, FL.* All waters within a 467 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°18′58.96″ N, 80°04′21.87″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(4) *Delray Beach, FL.* All waters within a 467 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°27′41.40″ N, 80°3′11.40″ W. This regulated area will be enforced from 8:30 p.m. until 9:30 p.m. on July 4, 2011.

(5) *Fort Lauderdale, FL.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°07′08.72″ N, 80°06′02.72″ W. This regulated area will be enforced from 9 p.m. until 9:45 p.m. on July 4, 2011.

(6) *Hollywood, FL.* All waters within a 467 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°01′10.00″ N, 80°06′38.00″ W. This regulated area will be enforced from 9 p.m. until 9:45 p.m. on July 4, 2011.

(7) *Key Biscayne, FL.* All waters within a 560 yard radius around the barge from which the fireworks will be launched, located on Biscayne Bay at approximate position 25°41′25.20″ N, 80°09′13.70″ W. This regulated area will be enforced from 8:30 p.m. until 9:30 p.m. on July 4, 2011.

(8) *Lauderdale by the Sea, FL.* All waters within a 187 yard radius around the pier from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°11′20.98″ N, 80°05′32.48″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(9) *Miami Beach, FL.* All waters within a 280 yard radius around the area from which the fireworks will be launched, located adjacent to the Atlantic Ocean at approximate position 25°46′38.08″ N, 80°07′46.37″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(10) *Pompano Beach, FL.* All waters within a 374 yard radius around the barge from which the fireworks will be launched, located on the Atlantic Ocean at approximate position 26°14′03.12″ N, 80°05′05.79″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(11) *Stuart, FL.* All waters within a 560 yard radius around the barge from which the fireworks will be launched, located on the St. Lucie River at approximate position 27°12′13.00″ N, 80°15′20.00″ W. This regulated area will be enforced from 9 p.m. until 9:30 p.m. on July 4, 2011.

(12) *West Palm Beach, FL.* All waters within a 280 yard radius around the barge from which the fireworks will be launched, located on the Intracoastal Waterway at approximate position 26°42′31.00″ N, 80°02′54.00″ W. This regulated area will be enforced from 9 p.m. until 9:45 p.m. on July 4, 2011.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated areas may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated areas is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. (d) *Effective Dates.* This rule is effective from 8:30 p.m. on July 4, 2011 until 9:45 p.m. on July 4, 2011.

Dated: June 1, 2011.

C.P. Scraba,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2011–14318 Filed 6–6–11; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 175 and 183

[Docket No. USCG–2009–0206]

RIN 1625–AB34

Installation and Use of Engine Cut-off Switches on Recreational Vessels

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard seeks public input on whether changes are needed to the regulations covering standard safety features on certain recreational vessels. Specifically, the Coast Guard is seeking comment on whether it should require engine cut-off switches as a standard safety feature on propulsion machinery and/or starting controls installed on recreational vessels less than 26 feet in length, and whether it should require operators of these recreational vessels to use engine cut-off switches. Comments should address the public safety aspects of the new requirements, as well as the cost implications and regulatory burden.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before September 6, 2011 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0206 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

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

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this advanced notice of proposed rulemaking, call or e-mail Mr. Jeff Ludwig, Coast Guard; telephone 202–372–1061, e-mail *Jeffrey.A.Ludwig@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

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

A. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0206), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2009–0206" in the "Keyword" box. Click "Search," then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

B. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box, insert "USCG–2009–0206" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

C. Privacy Act

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

D. Public meeting

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

II. Abbreviations

ABYC American Boat and Yacht Council
BARD (Coast Guard) Boating Accident Report Database
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR **Federal Register**
NBSAC National Boating Safety Advisory Council
NMMA National Marine Manufacturers Association
PWC Personal Watercraft
U.S.C. United States Code

III. Background

In a recent 5-year period, approximately 82.1 million people annually participated in recreational boating as an outdoor recreation activity

in the United States.[1] Of that population, approximately 53.8 million people enjoyed recreational boating on a motorized recreational vessel. Unfortunately, motorized recreational boating poses risks, including property damage, human injury, and even death. One of these risks is boating casualties caused by persons being struck by a recreational vessel or a propeller. Under 46 U.S.C. Chapter 43 (Recreational Vessels), the Secretary of the Department of Homeland Security is responsible for establishing minimum safety standards for recreational vessels and associated equipment, and requiring installation, carrying, or use of associated equipment. *See* 46 U.S.C. 4302(a). The Coast Guard, on behalf of the Secretary, carries out this responsibility.

Since the mid-1990s, the Coast Guard has investigated the appropriate course of action to address the recreational vessel and propeller strike-related casualty issue, trying to understand the causes of these casualties and determine the best way to prevent them. The Coast Guard has solicited requests for comments on various proposals to reduce recreational vessel and propeller strike-related casualties, and proposed and withdrawn two separate rulemakings to address this issue. The first rulemaking sought public input on the use of swimming ladders, warning notices, clear aft vision, propeller-shaft engagement alarms, engine cut-off switches, and education to address recreational vessel and propeller strike-related casualties. *See* 60 FR 25191 (May 11, 1995) (Request for comments), 61 FR 13123 (March 26, 1996) (Advance notice of proposed rulemaking), 62 FR 22991 (April 28, 1997) (Request for comments). The Coast Guard withdrew this rulemaking because it lacked sufficient data for the proposals at that time. *See* 66 FR 63650 (December 10, 2001) (Notice of Withdrawal).

At the same time the Coast Guard withdrew the first rulemaking, it initiated the second rulemaking focusing on propeller injury mitigation devices commonly referred to as "propeller guards." The notice of proposed rulemaking proposed requiring owners of certain recreational houseboats to install a propeller guard or use all of the following propeller injury avoidance measures: a swim ladder interlock, an aft visibility device, and an engine cut-off switch. 66 FR 63645 (December 10, 2001). The Coast Guard withdrew this rulemaking after public comments raised several issues, including the lack of a practical definition of a houseboat and straightforward performance requirements, and the potential costs of installing propeller guards. 72 FR 59064 (October 18, 2007) (Notice of Withdrawal). In the Notice of Withdrawal, the Coast Guard stated that it is still "exploring options that would more effectively prevent propeller injuries and impose a smaller burden on the economy," and specifically noted engine cut-off switches and boating safety education. *Id.* at 59065.

In 2006, the National Boating Safety Advisory Council (NBSAC) established a Propeller Injury Working Group to consider the development of educational formats, review of technologies, risk management techniques, accident scenarios, cost benefit analysis, and high-risk recreational vessel definitions and determinations. (NBSAC Resolution # 2005–76–04.) The working group developed four recommendations: (1) Develop a rental vessel education kit, (2) require the installation of engine cut-off switches, (3) require operators to use installed engine cut-off switches, and (4) require operators of vessels to shut off the engine when individuals in the water are within an unsafe distance of the vessel. The NBSAC endorsed these recommendations and forwarded them to the Coast Guard for further consideration. (NBSAC Resolution Nos. 2006–77–01, 2006–77–02, 2006–77–03, and 2006–77–04, found in the docket for this rulemaking.)

To address the second and third recommendations involving the installation, maintenance, and use of engine cut-off switches,[2] the Coast Guard analyzed 5 years of recreational vessel accident report data to identify casualties that may have been prevented if the recreational vessel operators had used an engine cut-off switch. The results of this analysis are found in "Casualties Preventable by Use of an Engine Cut-off Switch" (the Report, also placed in the docket for this rulemaking).[3] Staff members from the Boating Safety Division of the Coast Guard's Office of Auxiliary and Boating Safety and two civilian boating accident investigation experts (collectively, the reviewers) examined records drawn from the Coast Guard's Boating Accident Report Database (BARD) of recreational vessel accidents that occurred from 2002 through 2006.

The reviewers examined the narrative section of the accident reports for those accidents that they determined would "likely have been prevented" and found that a common cause of the casualties was the operator being absent from the helm because of an accidental ejection or a fall overboard. *Id.* Appendix B—Accident Descriptions for Preventable Deaths and Injuries. An operator may be ejected or fall overboard from the recreational vessel if, for example, the vessel hits a large wake, turns too sharply, or collides with another vessel or object in the water. When this happens, the recreational vessel will typically continue to operate, usually moving in circles, until it runs out of fuel, runs aground, collides with another object, or is disabled. Because a recreational vessel normally maintains the speed at which it is operating when the operator is ejected or falls overboard, or when the controls are otherwise unattended, it is often difficult for any persons ejected from the vessel or already in the water to swim out of the vessel's path, which may lead to one or more persons being struck by the vessel, a propeller, or a lower unit of the outboard or sterndrive. A "runaway" recreational vessel may also cause damage by striking vessels or other property.

The Coast Guard seeks comment on this list of accidents; specifically, whether casualties likely would have been prevented by the use of engine cut-off switches and whether there are additional accidents that should be included on the list.

To increase maritime domain safety and reduce and prevent recreational vessel and propeller strike-related casualties, the Coast Guard seeks data and information to inform its decision on whether it should require engine cut-off switch installation and use on these vessels. Although many, if not most, propulsion machinery and/or starting controls installed on recreational vessels are currently equipped with an engine cut-off switch, the Report's accident report narratives, contained in Report Appendices D and E, state that the recreational vessels involved in the accidents continued to move without an operator.

The Coast Guard developed this notice after considering both the human factors and equipment failures that

[1] H. Ken Cordell et al., *Long-Term National Trends in Outdoor Recreation Activity Participation—1980 to Now,* May 2009 (A Recreation Research Report in the Internet Research Information Series), available at *http://warnell.forestry.uga.edu/nrrt/nsre/IRISRec/IRISRec12rpt.pdf.* (This number represents the estimated number of people, operators, and passengers who participated in recreational boating in 2005–2009).

[2] In response to the first recommendation, the Coast Guard developed a rental education kit, which is now available to vessel liveries. The Coast Guard is still considering the fourth recommendation.

[3] The Report is available in the docket where indicated under the "Public Participation and Request for Comments" section of this preamble.

cause recreational vessel accidents. As required under 46 U.S.C. 4302(c), the Coast Guard consulted with the NBSAC; considered the need for regulations and the extent to which regulations will contribute to recreational vessel safety, and the relevant available recreational vessel safety standards, statistics, and data, including public and private research, development, testing, and evaluation. We believe that requiring engine cut-off switch use would address identified causes of recreational vessel and propeller strike-related casualties and support the Coast Guard's goal of improving maritime domain safety for all recreational boaters and others in and around our navigable waterways. The Coast Guard would like input from the public on the appropriateness of new regulations, and on other issues related to preventing boating casualties caused by persons being struck by a recreational vessel or propeller when the operator is separated from the operating controls.

IV. Advance Notice of Proposed Rulemaking Discussion

The Coast Guard seeks input from the public on whether it should add two new subparts to its boating safety regulations: (1) A new subpart E in 33 CFR part 175 would require the maintenance and use of engine cut-off switches, and (2) a new subpart N in 33 CFR part 183 would require the installation of engine cut-off switches. The Coast Guard is considering requirements in subpart E that would cover only those recreational vessels that are less than 26 feet in length and are equipped with an engine cut-off switch. Because the Coast Guard does not distinguish PWC (e.g., Sea-Doo®, AquaTrax®, JET SKI®, WaveRunner®) from other recreational vessels, this subpart would cover PWC that meet the length and equipment criteria. The Coast Guard is also considering a new subpart N that would cover propulsion machinery capable of developing static thrust of 115 pounds, approximately 3 horsepower or more, and associated starting controls manufactured for recreational vessels that are less than 26 feet in length, including PWC.

Engine cut-off switch use and maintenance would be required only for recreational vessels less than 26 feet in length, and engine cut-off switch installation would apply only to the associated equipment on those recreational vessels because these types of vessels are the most common type of recreational vessel and the type of recreational vessel on which the majority of recreational vessel or propeller strike-related accidents occurred from 2002 through 2006. From 2002 through 2006, 82 percent of all reported recreational vessel and propeller strike-related accidents in BARD involved motorized recreational vessels less than 26 feet in length. To determine whether vessel length should be a factor in the analysis in the Report that initiated this rulemaking, the Coast Guard reviewed this data set from BARD and determined that most of the previously reported recreational vessel and propeller strike-related casualties occurred on recreational vessels less than 26 feet in length.

Recreational vessels are registered based on length, and recreational vessels that are less than 26 feet in length account for approximately 95 percent of all motorized recreational vessels covering two registration categories: (1) Recreational vessels under 16 feet in length, and (2) recreational vessels 16 feet to less than 26 feet in length.[4] A recreational vessel's registration category is recorded in boating accident reports and subsequently captured in BARD. *See generally,* "Casualties Preventable by Use of an Engine Cut-off Switch" (analyzing data involving recreational vessels less than 26 feet in length only).

Engine cut-off switch installation requirements would apply only to propulsion machinery capable of developing at least 115 pounds of static thrust, and associated starting controls, because this type of machinery is already subject to Coast Guard safety regulations and is likely to already satisfy the proposed requirement. The start-in-gear safety regulations in 33 CFR part 183, subpart L, apply to propulsion machinery capable of developing at least 115 pounds of static thrust; this is the only existing safety requirement that applies to propulsion machinery. Additionally, based on industry information, the Coast Guard estimates that the majority of manufacturers already provide engine cut-off switches for this type of machinery.

A. Engine Cut-off Switch Use and Maintenance

The Coast Guard believes it would be necessary to add definitions that describe the terms "engine cut-off switch link," "engine cut-off switch," "person," "propulsion machinery," "starting control," and "static thrust." An engine cut-off switch is typically a mechanical or electronic device that is connected to the propulsion machinery that will stop the propulsion machinery if the switch is not properly connected, or the switch components are submerged in water or separated from the switch by a predetermined distance. The Coast Guard is considering defining an engine cut-off switch as the piece of equipment that turns the propulsion machinery off, and an engine cut-off switch link as the equipment that is attached to the recreational vessel operator and activates the engine cut-off switch. These proposed definitions would cover current mechanical and electronic wireless devices, as well as new technological developments in engine cut-off switch and link design after the effective date of any final rule resulting from this rulemaking. Under a new subpart N in 33 CFR part 183, those new technological developments would have to be consistent with a consensus industry standard.

The Coast Guard is considering, in a new subpart E, requiring recreational vessel operators to attach an engine cut-off switch link for any installed engine cut-off switch to their person, clothing, or life jacket (if worn) when operating a recreational vessel less than 26 feet in length. This requirement, however, would not apply while operators are docking or trailering their recreational vessels. The Coast Guard seeks comments on whether other situations, such as emergencies, should also be excepted from proposed subpart E, and how best to define or describe such situations.

The Coast Guard is considering requiring recreational vessel owners to maintain any installed engine cut-off switch and engine cut-off switch link so they function properly while the vessel's propulsion machinery is in gear. The Coast Guard is considering prohibiting anyone from operating a recreational vessel if the engine cut-off switch has been disabled or removed, or does not function properly.

The Coast Guard is also considering enforcement measures to increase the use of engine cut-off switches. To that end, the Coast Guard is considering whether to make persons who fail to comply with the engine cut-off switch use and maintenance requirements subject to the civil penalties in 46 U.S.C. 4311(c). Section 4311(c) of 46 U.S.C. sets forth a civil penalty not to exceed $1,000 for violating provisions of 46 U.S.C. Chapter 43 (Recreational Vessels) or any regulations prescribed under Chapter 43, which would include proposed subpart E. If a violation under 46 U.S.C. 4311(c) involves the operation

[4] U.S. Coast Guard, *Recreational Boating Statistics 2008,* COMDTPUB P16754.21, p. 62, available at *http://www.uscgboating.org/assets/1/Publications/Boating_Statistics_2008.pdf.* (Table 37 shows that of 11,841,281 mechanically propelled registered vessels in 2008, 11,257,369 were less than 26 feet in length (4,989,889 "under 16 feet;" 6,267,480 "16 to less than 26 feet").

of a recreational vessel, the vessel is also liable *in rem* for the penalty and could be seized by the Coast Guard.

B. Engine Cut-off Switch Installation

The Coast Guard is considering requiring new propulsion machinery capable of developing 115 pounds of static thrust or more, or the associated starting controls, to be equipped with an engine cut-off switch and link. All covered newly manufactured, locally operated ("tiller") outboards would be required to have an engine cut-off switch and link on the outboard. All covered newly manufactured, remotely operated outboard motors, inboard engines, and sterndrive engines would have to be equipped with starting controls containing an engine cut-off switch and link. If the Coast Guard adopts the installation requirement, the switch and link would have to comply with a consensus industry standard, American Boat & Yacht Council, Inc. (ABYC) A–33, Emergency Engine/Propulsion Cut-Off Devices (2009), which the Coast Guard would incorporate by reference into regulations. The Coast Guard is considering excluding starting controls installed inside a wheelhouse, cabin, or other permanent enclosure on a recreational vessel because there is a lesser likelihood of an operator being ejected or falling overboard from an enclosed space. The Coast Guard seeks comment on this exemption and on whether other groups of vessels should be exempted from engine cut-off switch installation.

The Coast Guard would like input from the public on how to phase-in any installation requirements. The Coast Guard is considering designating "new" propulsion machinery and starting controls as any such machinery or controls manufactured on or after January 1 of the second year following the year of the effective date of any final rule resulting from this rulemaking. For example, if a final rule became effective in January or December of 2012, manufacturers of propulsion machinery and starting controls would be required to comply with the rule by January 1, 2014. We seek comments on whether this 12–24 month implementation period would provide sufficient time to implement these proposed requirements.

The Coast Guard is also considering requiring manufacturers, distributors, and dealers installing new propulsion machinery and associated starting controls on a recreational vessel less than 26 feet in length to ensure that the propulsion machinery or starting control is equipped with an engine cut-off switch and link that complies with a consensus industry standard incorporated by reference into the regulations. The Coast Guard is considering covering under the requirements installations by manufacturers, distributors, and dealers on new recreational vessels as well as existing recreational vessels. While the Coast Guard is considering covering any propulsion machinery and starting control replacements made by manufacturers, distributors, and dealers on existing boats, the Coast Guard is considering not requiring such replacements or any retrofitting of existing propulsion machinery and starting controls.

The Coast Guard is considering delaying the installation requirement so that it does not apply until July 1 of the second year following the year of the effective date of any final rule resulting from this rulemaking. The Coast Guard seeks comment on whether this 6-month delay, from the date that manufacturers would be required to provide engine cut-off switches on propulsion machinery or starting controls, would provide enough time for manufacturers, distributors, and dealers to have compliant propulsion machinery and starting controls for installation.[5]

The Coast Guard is considering including definitions for the terms "engine cut-off switch link," "engine cut-off switch," "person," "propulsion machinery," "starting control," and "static thrust." These potential definitions would also apply to engine cut-off switch use and maintenance requirements. The Coast Guard is also considering including definitions for the terms "dealer," "distributor," and "manufacturer," which would be adopted from 33 CFR 183.705.

In order to bolster the importance and deterrent effect of the regulations in 33 CFR part 183, thereby preventing maritime deaths and injuries, the Coast Guard is considering making any person who fails to comply with engine cut-off switch use and maintenance requirements subject to civil (and possibly criminal) penalties under 46 U.S.C. 4311. In addition to the civil penalties under § 4311(c) discussed in relation to engine cut-off switch use and maintenance requirements, § 4311(b)(1) sets forth a civil penalty not to exceed $5,000 for violating 46 U.S.C. 4307(a), which prohibits a person from manufacturing, constructing, assembling, selling, or offering for sale, a recreational vessel, associated equipment, or a component of either, unless it conforms to 46 U.S.C. Chapter 43 (Recreational Vessels) or any regulations prescribed under Chapter 43, which currently includes all regulations in 33 CFR part 183 and would also include installation requirements. Because the penalties in 46 U.S.C. 4311 currently apply to violations of any requirement in 33 CFR part 183, and would apply to violations of proposed installation requirements if made final, the Coast Guard is considering whether to add explicit language to its regulations incorporating these penalties. The Coast Guard is considering adding references to these statutory penalty provisions for clarity and to ensure that anyone reading Coast Guard regulations in part 183 understands that there are specific penalties, explicitly provided for by statute, for violating any regulation in part 183. Adding the reference to the statutory penalty provisions into the regulations would not create any new penalties.

C. Preemption

The engine cut-off switch requirements discussed here would preempt those State laws on waters subject to the jurisdiction of the United States that are not identical to any final rule resulting from this rulemaking, and would create a national standard for engine cut-off switch installation and use. Currently, five States (Alabama,[6]

[5] The Coast Guard must provide at least 180 days between publication of the final rule and the effective date of the final rule. *See* 46 U.S.C. 4302(b). For any final rule involving "major product design, retooling, or major changes in the manufacturing process," the Coast Guard must make the rule effective within 24 months or less. *Id.* The Coast Guard does not consider proposed subpart N to involve a "major product design, retooling, or major changes in the manufacturing process" because the proposed requirement for propulsion machinery involves minor engineering adjustments to add engine cut-off switch capability to any currently manufactured propulsion machinery not equipped with this capability, and the installation requirements do not affect product design, retooling, or the manufacturing process. Therefore, only the 180-day delayed effective date statutory requirement applies to this rulemaking, and the 12–24 month implementation period for the proposed requirement that manufacturer provide engine cut-off switches on propulsion machinery and starting controls, and the 18–30 month implementation period (in order to include a 6-month delay, discussed in the text) for the proposed requirement covering installations, would satisfy this statutory requirement.

[6] Ala. Code 1975 § 33–5–72(a) (2009) ("It shall be unlawful on the waters of this state for any person to operate, or give permission to another person to operate, any vessel less than 24 feet in length having an open construction and having more than 50 horsepower, unless the vessel is equipped with an emergency engine or motor shut-off switch.").

Arkansas,[7] Louisiana,[8] Illinois,[9] and Nevada[10]) have already enacted their own requirements for recreational vessel operators to use engine cut-off switches, and 46 States[11] have enacted engine cut-off switch requirements for personal watercraft (PWC) only.

Pursuant to 46 U.S.C. 4306, Federal regulations establishing minimum safety standards for recreational vessels and associated equipment and establishing procedures and tests required to measure conformance with those standards preempt State law, unless the State law is identical to a Federal regulation or a State is specifically provided an exemption to those regulations or permitted to regulate marine safety articles carried or used to address a hazardous condition or circumstance unique to that State. Because of this express preemption, States may not establish, continue in effect, or enforce any law or regulation addressing engine cut-off switch requirements that is not identical to any final rule resulting from this rulemaking. The Coast Guard seeks comments, specifically from States, regarding this proposal's preemption of State laws.

V. Information Requested

The Coast Guard requests comments on engine cut-off switch devices and other information that would assist us with this proposal. We have provided the following list of specific questions to guide commenters in providing input that will assist us with developing this proposal. Please support your input with quantitative data where possible and include sources and complete citations for any quantitative data.

1. Recreational boating accidents can cause a variety of negative impacts, including loss of life, injuries, and property damage. As described above and based on the report "Casualties Preventable by Use of an Engine Cut-off Switch," a causal factor in recreational vessel and propeller strike-related casualties is the recreational vessel operator being separated from the helm because of an accidental ejection or a fall overboard. Data from this report suggests that the use of an engine cut-off switch would reduce the risk of boating casualties caused by persons being struck by a recreational vessel or propeller when the operator is separated from the helm. In addition to this information, are there other sources of data or information detailing benefits or avoided damages which may result from the use of engine cut-off switches?

2. What vessel types should be considered for mandatory engine cut-off switch requirements (e.g., all motor vessels, motor vessels with hand-tiller motors, PWCs, houseboats)?

3. What vessel lengths should not be considered for mandatory engine cut-off switch requirements (e.g., motor vessels greater than 26 feet in length)?

4. What engine power ("horse-power ") measures should be considered for mandatory engine cut-off switch requirements (e.g., engines greater than 3 horsepower)?

5. What other engine or vessel features should the Coast Guard consider to determine the boating population that should be covered by engine cut-off switch requirements?

6. Based on information provided by the National Marine Manufacturers Association (NMMA), manufacturers have been routinely installing engine cut-off switches on engines or their associated starting controls.[12] What data exists to estimate the percentage of recreational vessels and engines that have engine cut-off switches provided as standard equipment?

7. How many and what types of recreational vessels or engines do not have engine cut-off switches provided as standard equipment (e.g., boats constructed by owner)?

8. According to a report by the Outdoor Foundation in partnership with the Recreational Boating and Fishing Foundation, one measure of the number of outings or trips for non-commercial recreational vessels is 15 per year for powerboat users.[13] Are there any additional sources documenting the number of trips for recreational vessels or recreational vessel use rates by vessel types?

9. Similarly, are there any sources documenting the average number of trips commercial operators of recreational vessels make in a year?

10. What is the average number of times an engine cut-off switch lanyard or device would be attached and detached in a trip by the vessel operator?

11. What is the average amount of time it would take for a vessel operator to attach or detach the lanyard?

12. How would operators and passengers be impacted by the number of times an engine cut-off switch is attached and detached by the vessel operator? How should the Coast Guard consider the potential "hassle factor" associated with using an engine cut-off switch?

13. If a vessel or engine currently does not have an engine cut-off switch installed, what are the installation costs, separated out into parts and labor categories?

14. What is the average lifespan of an engine cut-off switch?

15. What are the associated maintenance and replacement costs of engine cut-off switch devices?

16. What is the recommended lanyard replacement schedule? How often are lanyards replaced? What is the average cost of the lanyard replacement? When operating a recreational vessel equipped with an engine cut-off switch, does the operator purchase and maintain a spare lanyard?

17. How many boaters use wireless engine cut-off switch devices? What percentage of total cut-off switch use

[7] A.C.A. § 27–101–203(e)(1)(A) (2009) ("No person shall operate a motorboat equipped by the manufacturer with a lanyard-type engine cut-off switch while the engine is used to propel the boat without attaching the lanyard to the operator, the operator's clothing, or, if the operator is wearing a personal flotation device, to the device as appropriate for the specific vessel").

[8] LAC 76:XI.111.C (2009) ("No person shall operate a Class A or Class One motorboat with a hand tiller outboard motor in excess of ten horsepower designed to have or having an engine cut-off switch, while the engine is running and the motorboat is underway, unless the engine cut-off switch is fully functional and in operable condition; and the engine cut-off switch link is attached to the operator, the operator's clothing, or if worn, the operator's personal flotation device").

[9] 625 ILSC 45/4–11 (2009) ("No person may operate any motor boat, including personal watercraft or specialty prop-craft, which is equipped with a lanyard type engine cut-off switch unless such lanyard is properly attached to his or her person, clothing or worn PFD, as appropriate for the specific vessel.")

[10] N.R.S. 488.585.1 (2009) ("A person who owns or controls a motorboat that is equipped with an engine cut-off switch shall not operate or authorize another person to operate the motorboat at a rate of speed greater than 5 nautical miles per hour if the engine cut-off switch or engine cut-off switch link is missing, disconnected or not operating properly").

[11] *See* National Association of State Boating Law Administrators Reference Guide to State Boating Laws available at *http://www.nasbla.net/referenceguide/index.php?queryID=4.8.* Some States require use of a cut-off device if the device is present. See e.g., Arizona Revised Statues § 5–350.B ("A person who operates a personal watercraft that is equipped by the manufacturer with a lanyard type engine cut-off switch shall attach the lanyard to his body, clothing or personal flotation device as appropriate for the specific watercraft"). Others States require personal watercraft to have either a cut-off device or self-circling device. *See e.g.,* 23 Delaware Code § 2212(d) ("No person shall operate a personal watercraft unless the personal watercraft is equipped with a self-circling device or a lanyard-type engine cut-off switch * * *).

[12] According to National Marine Manufacturers Association (NMMA), "for more than ten years, many of the motorboats on the market have been equipped with engine cut-off switches". (Press release, April 10, 2006: *http://www.nmma.org/news/news.asp?id=12346&sid=43*)

[13] The Outdoor Foundation in partnership with the Recreational Boating and Fishing Foundation, "A Special Report on Fishing and Boating", 2009, page 36 (see *http://www.outdoorfoundation.org/research.fishing.html*).

does this represent? What percentage of these wireless devices are standard (original) equipment on vessels and engines? What are the installation and maintenance costs (labor and equipment) of wireless devices? What is the expected lifespan of wireless devices? Are there any special performance or failure issues unique to wireless devices?

18. How would this proposal change boater preference for wireless engine cut-off switch devices? Would boaters choose more expensive wireless systems over standard non-wireless systems? If so, why and how many?

19. As a result of this proposal, would vessel and engine manufacturers adopt wireless technology as standard equipment?

20. Would this proposal increase the use and wear of engine cut-off switch devices over and above the manufacturer's recommended use? Would this proposal increase the replacement costs of engine cut-off switch devices?

21. What is the risk of unintended activations of engine cut-off switch devices? What is the current estimated rate of unintended activations? What are the impacts of unintended activations? Are there any injuries or fatalities associated with unintended activations?

22. What is the risk of engine cut-off switch device failure (i.e., engine does not cut off when operator is ejected)? What is the current estimated rate of engine cut-off switch device failures? What are the impacts of engine cut-off switch device failures? Are there any injuries or fatalities associated with engine cut-off switch device failures?

23. What data or information exists that could be used to estimate compliance rates of this proposal? What data exists to estimate how compliance with proposal will change from initial phase-in to full implementation?

24. How would the challenge to visually inspect from a distance whether an engine cut-off switch device is being used affect compliance with engine cut-off switch device requirements?

25. What are the compliance rates with State laws that require use of engine cut-off switch devices?

26. What is the voluntary use rate of engine cut-off switch devices in States without engine cut-off switch device laws?

27. Five States (Alabama, Arkansas, Illinois, Louisiana, and Nevada) currently require boaters to use engine cut-off devices on certain recreational vessels. What other State laws are being developed for engine cut-off switch device regulations? Please provide any data or information from the implementation or development of these State regulations to assist the Coast Guard as it considers whether to require engine cut-off switch device use.

28. What are the costs associated with implementation of State laws requiring mandatory use of engine cut-off switch devices?

29. What is the effectiveness based on the reduction in fatalities, injuries, and property damage from recent changes in State laws regarding the use of engine cut-off switch devices?

Dated: June 2, 2011.

Kevin S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–14140 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 246, and 252

RIN 0750–AG74

Defense Federal Acquisition Regulation Supplement (DFARS); Warranty Tracking of Serialized Items, DFARS Case 2009–D018

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a policy memorandum of the Undersecretary of Defense for Acquisition, Technology and Logistics dated February 6, 2007, which required definition of the requirements to track warranties for Item Unique Identification-required items in the DoD Item Unique Identification Registry. This final rule stresses that the enforcement of warranties is essential to the effectiveness and efficiency of DoD's material readiness.

DATES: *Effective date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Julian Thrash, 703–602–0310.

SUPPLEMENTARY INFORMATION:

I. Background

The Undersecretary of Defense for Acquisition, Technology and Logistics issued a policy memorandum dated February 6, 2007, which instructed the Director of Defense Procurement and Acquisition Policy to define the requirements to track warranties for Item Unique Identification-required items in the DoD Item Unique Identification Registry. The capability to track warranties will significantly enhance the ability of DoD to—

- Identify and enforce warranties;
- Ensure sufficient durations of warranties for specific goods; and
- Realize improved material readiness.

DoD issued a proposed rule in the **Federal Register** at 75 FR 52917 on August 30, 2010, to address the requirement to more effectively track warranties for Item Unique Identification items. The comment period closed October 29, 2010.

II. Public Comment

One respondent submitted comments to the proposed rule, which are discussed below.

Comment: The respondent states that while the unique item identification requirement was not established for the purpose of tracking warranty items, its use as a warranty-tracking methodology would result in increased costs for contractors and the Government. The addition of warranted items to DFARS 211.274–2 will expand the criteria for selecting the items to be uniquely identified. Today, that determination is based almost completely on the value of the item. Warranted items may or may not meet the value criterion established for determining what should be uniquely identified and marked. An application of unique item identification to warranted items may cause a part to be covered by unique item identification under a contract calling for warranty and not covered by unique item identification on another contract without warranty.

Response: This requirement applies to any "warranted serialized item," and a clarifying change was made at 211.274–2(4)(iii) by adding the term "any warranted serialized item."

Comment: The respondent also recommends that DoD not publish a final rule on warranty tracking of serialized items.

Response: DoD requires a more effective way to track warranties for Item Unique Identification items. Presently, DoD lacks the enterprise capability to provide visibility and accountability of warranty data associated with acquired goods. The tracking of warranties, from the identification of the requirement to the expiration date of the warranted item, will significantly enhance the ability of DoD to take full advantage of warranties when they are part of an acquisition. This will result in reduced costs, ability to recognize benefits, and the ability to compare performance against

Government-specified warranties. The consequence of not collecting this data is that warranty management of mission critical assets is not optimized, which may have a significant impact during time of war or in response to contingencies. When this capability is developed, it is expected that warranty information will be collected and shared by acquisition organizations to document and improve warranty management. Additionally, as counterfeit items, particularly electronics parts increase, this traceability of items to a warranty will assist all members of the supply chain to manage risk appropriately. This traceability also leads to ensuring the Government receives the supplies purchased, reducing the number of counterfeit items. Based upon the above, DoD published a final rule.

III. Additional Technical Changes Required

During the final rule development, DoD restructured the layout of the rule to reduce burden to contractors and to facilitate data capture. This change required moving the tables from the clause at 252.246–7006, Warranty Tracking of Serialized Items, to 246.710–70, Warranty attachment. This will enable data capture through the use of the warranty attachments. DoD has posted schema to the DPAP/Program Development and Implementation Web site at *http://www.acq.osd.mil/dpap/pdi/eb/gfp.html,* to facilitate this process. A summary of the required technical changes follows—

- DFARS 211.274–2, Policy for unique item identification—added the term "any warranted serialized item" to clarify that this rule applies to serialized warranted items, regardless of the value. The existence of a warranty does not solely create a criterion for Item Unique Identification applicability.
- DFARS 246.701, Definitions—added references to definitions for "duration," "enterprise," "enterprise identifier," "fixed expiration," "issuing agency," "item type," "starting event," "serialized item," "unique item identifier," "usage," "warranty administrator," "warranty guarantor," "warranty repair source," and "warranty tracking" as being defined in the clause at 252.246–7006.
- DFARS 246.710, Solicitation provision and contract clauses, paragraph (5)—replaced previous references to tables I and II as the warranty attachments were added to DFARS 246.710–70. Related subparagraphs were revised accordingly to incorporate tables I and II, which were previously referred to in the provision at 252.246–7005, and included in the clause at 252.246–7006. Electronic business systems are being expanded to capture the data elements needed to support warranty tracking through the use of an attachment format. The procurement data strategy, the DoD method to implement data capture, relies on attachment file formats. This format can be embedded in the contract data file by the contract writing system, or sent in parallel as a separate attachment. To facilitate data capture, the tables for warranty data have been translated into an XML attachment schema published by DPAP, and available at this website: *http://www.acq.osd.mil/dpap/pdi/eb/gfp.html.* This schema will enable data flow from system to system. Data flow from a clause is not possible because the clause is text, not data. Extracting the data requirements from the clause and carrying it separately in an attachment will make the flowing of the data to the various business systems possible without modifying every DoD contract writing system.
- DFARS 246.710–70, Warranty attachment—a new section was added to provide two attachments and completion instructions to replace two tables previously included in the proposed clause at 252.247–70YY. The two new attachments are "Attachment __: Warranty Tracking Information," and "Attachment __: Warranty Repair Source Instructions."
- The "Warranty Tracking Information" attachment title is supplemented to include "Solicitation or Contract Number *[To be filled in by the contracting officer]*." Further, this attachment indicates that data marked "*" is to be completed by the requiring activity if a warranty is specified by the Government otherwise all offerors are to complete those elements as part of their offers. Data marked by "**" is to be completed by the contractor at the time of award. A reference to "***" was added for data to be completed at or after the time of award. The definition for "warranty administrator enterprise identifier" was revised to include the term "globally unique" identifier code.
- The "Warranty Repair Source Instructions" attachment title is supplemented to include "Solicitation or Contract Number [To be filled in by the contracting officer]." Additionally, the numbering for the table notes was revised for that table only. The definition for "warranty administrator enterprise identifier" was revised for clarity to include the term "globally unique" identifier code rather than using the term "non-repeatable." Also, a note for "instructions" was moved from the table, and made a stand-alone note under the table.
- 252.211–7003(a), Item Identification and Valuation—the definition of "issuing agency" was revised for clarity to include the term a "globally unique" identifier code rather than using the term "non-repeatable."
- 252.246–7005, Notice of Warranty Tracking of Serialized Items, was revised to replace references to tables I and II, which were incorporated into DFARS 246.710 as a warranty attachment.
- 252.246–7006, Warranty Tracking of Serialized Items—
- Paragraph (a), the definition of "DoD Item Unique Identification Registry" was not required for the clause and was removed. The definition of "issuing agency" was revised to include the term "globally unique" identifier code for clarity.
- Paragraph (b) was revised to remove references to tables I and II as these tables are incorporated into 246.710–70 as a warranty attachment to facilitate data flow.

IV. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Regulatory Flexibility Act

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604 *et seq.* A copy of the analysis may be obtained from the point of contact specified herein and is summarized below. The objective of this rule was for DoD to develop a more effective way to track warranties for Item Unique Identification items. DoD has lacked the enterprise capability that would provide visibility and accountability of warranty data associated with acquired goods. The tracking of warranties, from the identification of the requirement to the expiration date of the warranted item, will significantly enhance the ability of

DoD to take full advantage of warranties when they are part of an acquisition, resulting in the ability to—

- Identify and enforce warranties;
- Ensure sufficient durations of warranties for specific goods; and
- Realize improved material readiness.

In FY 2009, DoD issued approximately 16,000 solicitations that use warranty clauses. In response to those solicitations, DoD estimates that approximately 76,000 offers may have been received (66,000 from small business, 10,000 from other than small business). Of that total, DoD estimates that 50% of the time the Government will provide the required warranty information for 38,000 offers (33,000 small and 5,000 other than small businesses). Therefore, approximately 33,000 small entities may be impacted by the rule.

This rule was published as a proposed rule in the **Federal Register** at 75 FR 52971, on August 30, 2010. No comments were received from small entities on the affected DFARS subpart with regard to small businesses. We anticipate that there will be limited, if any, additional costs imposed on small businesses unless there is a covered claim filed against a particular contractor.

IV. Paperwork Reduction Act

The provision at 252.246–7005, Notice of Warranty Tracking of Serialized Items and the clause at 252.246–7006, Warranty Tracking of Serialized Items, contain new information collection requirements. The Office of Management and Budget has approved the information collection requirements under Control Number 0704–0481, Warranty Tracking of Serialized Items.

List of Subjects in 48 CFR Parts 211, 246, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 246, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 246, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Amend section 211.274–2 as follows:
■ (a) Amend paragraph (a)(4)(i) to remove "and" after the semicolon;
■ (b) Amend paragraph (a)(4)(ii) to add the word "and" after the semicolon;
■ (c) Add new paragraph (a)(4)(iii) to read as set forth below.

211.271–2 Policy for unique item identification.

(a) * * *
(4) * * *
(iii) Any warranted serialized item.

PART 246—QUALITY ASSURANCE

■ 3. Revise section 246.701 to read as follows:

246.701 Definitions. As used in this subpart—

Acceptance as used in this subpart and in the warranty clauses at FAR 52.246–17, Warranty of Supplies of a Noncomplex Nature; FAR 52.246–18, Warranty of Supplies of a Complex Nature; FAR 52.246–19, Warranty of Systems and Equipment Under Performance Specifications or Design Criteria; and FAR 52.246–20, Warranty of Services, includes the execution of an official document (e.g., DD Form 250, Material Inspection and Receiving Report) by an authorized representative of the Government.

Defect means any condition or characteristic in any supply or service furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Duration, enterprise, enterprise identifier, fixed expiration, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and *warranty tracking* are defined in the clause at 252.246–7006, Warranty Tracking of Serialized Items.

■ 4. Amend section 246.710 to:
■ (a) Revise the section title; and
■ (b) Add new paragraph (5)(i).

The additions and revisions read as follows:

246.710 Solicitation provision and contract clauses.

* * * * *

(5)(i) In addition to 252.211–7003, Item Identification and Valuation, which is prescribed in 211.274– 6(a), use the following provision and clause in solicitations and contracts when it is anticipated that the resulting contract will include a warranty for serialized items:

(A) 252.246–7005, Notice of Warranty Tracking of Serialized Items (include only if offerors will be required to enter data with the offer); and

(B) 252.246–7006, Warranty Tracking of Serialized Items.

(ii) If the Government specifies a warranty, include in the solicitation the appropriate warranty attachment from DFARS 246.710–70. The contracting officer shall request the requiring activity to provide information to ensure that Attachment __, Warranty Tracking Information, is populated with data specifying the Government's required warranty provision by contract line item number, subline item number, or exhibit line item number prior to solicitation. In such case do not include 252.246–7005 in the solicitation.

(iii) If the Government does not specify a warranty, include 252.246–7005 in the solicitation, and the warranty attachment from DFARS 246.710–70. The contractor may offer a warranty and shall then populate Attachment _, Warranty Tracking Information, as appropriate, as part of its offer as required by 252.246–7005.

(iv) All warranty tracking information that is indicated with a single asterisk (*) in Attachment __, Warranty Tracking Information, shall be completed prior to award. Data indicated with two asterisks (**) may be completed at the time of award. Data indicated with three asterisks (***) may be completed at or after the time of award.

(v) The contractor shall provide warranty repair source instructions (as prescribed in the attachment) no later than the time of delivery.

■ 5. Add new section 246.710–70 to read as follows:

246.710–70 Warranty attachment.

This is the prescribed attachment and format required and referenced in the provision at 252.246–7005, Notice of Warranty Tracking of Serialized Items, and the clause at 252.246–7006, Warranty Tracking of Serialized Items. The contracting officer shall number the attachment upon issuance of the solicitation and include the solicitation or contract number.

AttachmenT __: Warranty Tracking Information

SOLICITATION OR CONTRACT NUMBER
[To be filled in by the contracting officer]

CLIN SLIN OR ELIN *	Item type (note (a)) **	Warranty item UII ***	Warranty term						Warranty Administrator Enterprise Identifier Code Type (note (f)) **	Warranty Administrator Enterprise Identifier (note (g)) **	Warranty Guarantor Enterprise Identifier Code Type (note (h)) **	Warranty Guarantor Enterprise Identifier (note (i)) **
			Starting event (note (b)) *	Usage (note (c)) *		Duration (note (d)) *		Fixed expiration (note (e))				
				Quantity *	Unit *	Quantity *	Unit *	Date *				

* To be completed by the requiring activity, if warranty is specified by the Government. Otherwise, all offerors are to complete as part of their offers.
** To be completed by the contractor at the time of award.
*** To be completed by the contractor at the time of award (if known) or at the time Attachment __, Warranty Repair Source Instructions is submitted.

Notes:

(a) Item Type.
C—component procured separate from end item.
S—subassembly procured separate from end Item or subassembly.
E—embedded in component, subassembly or end item parent.
P—parent end item.

(b) Starting Event.
A—Acceptance.
I—Installation.
F—First Use.
O—Other.

Warranty term—Choose one of the following:

(c) Usage (for warrantees where effectivity is in terms of operating time or cycles).
(d) Duration (for warrantees that expire after a set period of time).
(e) Date (for warrantees with a fixed expiration date).

(f) Warranty Administrator Enterprise Identifier Code Type 0–9—GS1 Company Prefix.
D—CAGE.
LB—ATIS–0322000.
LH—EHIBCC.
RH—HIBCC.
UN—DUNS.

(g) Warranty administrator enterprise identifier—A globally unique identifier code assigned to an enterprise by an issuing agency *(e.g.,* Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number, European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)).

(h) Warranty Guarantor Enterprise Identifier Code Type 0–9—GS1 Company Prefix.
D—CAGE.
LB—ATIS–0322000.
LH—EHIBCC.
RH—HIBCC.
UN—DUNS.

(i) Warranty guarantor enterprise identifier—A globally unique identifier code assigned to an enterprise by an Issuing Agency (*e.g.,* Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number, European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)).

Attachment __: Warranty Repair Source Instructions

CONTRACT NUMBER:
[To be filled in by the contracting officer]

CLIN, SLIN or ELIN *	Warranty Repair Source Enterprise Identifier Code Type (note (a)) **	Warranty Repair Source Enterprise Identifier (note (b)) **	Shipping address for warranty returns							Instructions (note (c)) **
			Name **	Address line 1 **	Address line 2 **	City/county **	State/province **	Postal code **	Country **	

* To be completed by the requiring activity, if warranty is specified by the Government. Otherwise, all offerors are to complete as part of their offers.
** To be completed by the Contractor at the time of award and/or at the time of delivery.

Notes:

(a) Warranty Repair Source Enterprise Identifier Code Type 0–9—GS1 Company Prefix.
D—CAGE.
LB—ATIS–0322000.
LH—EHIBCC.
RH—HIBCC.
UN—DUNS.

(b) Warranty repair source enterprise identifier—A globally unique identifier code assigned to an enterprise by an issuing agency (e.g., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number, European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)).

(c) Instructions—For each warranty repair source enterprise identifier, include the shipping address for returning warranty items, or include instructions for accessing a web site to obtain prepaid shipping labels for returning warranty items to the designated source of warranty repair.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.211–7003 as follows:

■ (a) Amend the clause date by removing "(AUG 2008)" and adding in its place "(JUN 2011)";

■ (b) Amend paragraph (a) by revising the definition of "Issuing agency" as shown below.

252.211–7003 Item Identification and Valuation.

* * * * *

(a) * * *

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise (e.g.,

Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/ Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm.*

* * * * *

■ 7. Add section 252.246–7005 to read as follows:

252.246–7005 Notice of Warranty Tracking of Serialized Items.

As prescribed in 246.710(5)(i)(A), use the following provision:

Notice of Warranty Tracking of Serialized Items (Jun 2011)

(a) *Definition. Unique item identifier* and *warranty tracking* are defined in the clause at 252.246–7006, Warranty Tracking of Serialized Items.

(b) *Reporting of data for warranty tracking and administration.* The offeror shall provide the information required by Attachment __, Warranty Tracking Information, (indicated by a single asterisk (*)), on each contract line item number, subline item number, or exhibit line item number for warranted items. The offeror shall provide all information required by Attachment __, Warranty Repair Source Instruction, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The "Warranty Item Unique Item Identifier data category may also be completed in conjunction with Attachment _, Warranty Repair Source Instruction. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The offeror shall submit the data for warranty tracking to the Contracting Officer.

(End of provision)

■ 6. Add section 252.246–7006 to read as follows:

252.246–7006 Warranty Tracking of Serialized Items.

As prescribed in 246.710(5)(i)(B), use the following clause:

Warranty Tracking of Serialized Items (Jun 2011)

(a) *Definitions.* As used in this clause—

Duration means the warranty period. This period may be a stated period of time, amount of usage, or the occurrence of a specified event, after formal acceptance of delivery, for the Government to assert a contractual right for the correction of defects.

Enterprise means the entity (*e.g.,* a manufacturer or vendor) responsible for granting the warranty and/or assigning unique item identifiers to serialized warranty items.

Enterprise identifier means a code that is uniquely assigned to an enterprise by an issuing agency.

First use means the initial or first-time use of a product by the Government.

Fixed expiration means the date the warranty expires and the Contractor's obligation to provide for a remedy or corrective action ends.

Installation means the date a unit is inserted into a higher level assembly in order to make that assembly operational.

Issuing agency means an organization responsible for assigning a globally unique identifier to an enterprise (e.g., Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, Allied Committee 135 NATO Commercial and Government Entity (NCAGE)/Commercial and Government Entity (CAGE) Code, or the Coded Representation of the North American Telecommunications Industry Manufacturers, Suppliers, and Related Service Companies (ATIS–0322000) Number), European Health Industry Business Communication Council (EHIBCC) and Health Industry Business Communication Council (HIBCC)), as indicated in the Register of Issuing Agency Codes for ISO/IEC 15459, located at *http://www.nen.nl/web/Normen-ontwikkelen/ISOIEC-15459-Issuing-Agency-Codes.htm.*

Item type means a coded representation of the description of the item being warranted, consisting of the codes C—component procured separate from end item, S—subassembly procured separate from end item or subassembly, E—embedded in component, subassembly or end item parent, and P—parent end item.

Starting event means the event or action that initiates the warranty.

Serialized item means each item produced is assigned a serial number that is unique among all the collective tangible items produced by the enterprise, or each item of a particular part, lot, or batch number is assigned a unique serial number within that part, lot, or batch number assignment within the enterprise identifier. The enterprise is responsible for ensuring unique serialization within the enterprise identifier or within the part, lot, or batch numbers, and that serial numbers, once assigned, are never used again.

Unique item identifier means a set of data elements marked on an item that is globally unique and unambiguous.

Usage means the quantity and an associated unit of measure that specifies the amount of a characteristic subject to the contractor's obligation to provide for remedy or corrective action, such as a number of miles, hours, or cycles.

Warranty administrator means the organization specified by the guarantor for managing the warranty.

Warranty guarantor means the enterprise that provides the warranty under the terms and conditions of a contract.

Warranty repair source means the organization specified by a warranty guarantor for receiving and managing warranty items that are returned by a customer.

Warranty tracking means the ability to trace a warranted item from delivery through completion of the effectivity of the warranty.

(b) *Reporting of data for warranty tracking and administration.* The Contractor shall provide all information required by Attachment __, Warranty Tracking Information on each contract line item number, subline item number, or exhibit line item number for warranted items. The Contractor shall provide all information required by Attachment __, Warranty Repair Source Instructions, prior to, but not later than when the warranted items are presented for receipt and/or acceptance. The "Warranty Item Unique Item Identifier" data category may also be completed in conjunction with Attachment __, Warranty Repair Source Instructions. Information required in the warranty attachment shall include such information as duration, enterprise, enterprise identifier, first use, fixed expiration, installation, issuing agency, item type, starting event, serialized item, unique item identifier, usage, warranty administrator, warranty guarantor, warranty repair source, and warranty tracking. The Contractor shall submit the data for warranty tracking to the Contracting Officer with a copy to the requiring activity and the Contracting Officer Representative.

(c) *Reservation of rights.* The terms of this clause shall not be construed to limit the Government's rights or remedies under any other contract clause.

(End of clause)

* * * * *

[FR Doc. 2011–14104 Filed 6–7–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 212

RIN 0750–AH23

Defense Federal Acquisition Regulation Supplement; Inclusion of Option Amounts in Limitations on Authority of the Department of Defense to Carry Out Certain Prototype Projects (DFARS Case 2011–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 826 of the National Defense Authorization Act for Fiscal Year 2011. Section 826 amended the DoD pilot program for transition to follow-on contracting after use of other transaction authority, to establish that the threshold limitation of $50 million for contracts and subcontracts under the program includes the dollar value of all options.

DATES: Effective June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Manuel Quinones, telephone 703 602–8383.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the DoD pilot program addressed in Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 212.70, Pilot Program for Transition to Follow-On Contracting after Use of Other Transaction Authority (OTA). It adds a new section 212.7002–3, Thresholds, to clarify that, consistent with FAR 1.108(c), Dollar Thresholds, the threshold limitation for contracts and subcontracts under the pilot program of $50 million includes the dollar value of all options.

DoD has issued this rule as a final rule because the rule does not have a significant effect beyond DoD internal operating procedures as it merely reinforces current guidance in the Federal Acquisition Regulation (FAR). Further, it does not have a significant cost or administrative impact on contractors. FAR 1.108(c) currently states, in part, that "unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options."

II. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501 and public comment is not required in accordance with 41 U.S.C. 1707.

IV. Paperwork Reduction Act

The rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 212

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 212 is amended as follows:

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 1. The authority citation for 48 CFR part 212 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 212.7002–3 to subpart 212.70 to read as follows:

212.7002–3 Thresholds.

The contract and subcontract thresholds at 212.7002–1(a)(3) and 212.7002–2(a)(2) include the dollar value of all options in accordance with section 826 of the National Defense Authorization Act for Fiscal Year 2011. See also FAR 1.108(c).

[FR Doc. 2011–14108 Filed 6–7–11; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA482

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice 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 Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2011 Alaska plaice total allowable catch (TAC) specified for the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), June 4, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

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 2011 Alaska plaice TAC specified for the BSAI is 13,600 metric tons as established by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that the 2011 Alaska plaice TAC in the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 12,600 mt, and is setting aside the remaining 1,000 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Alaska plaice in the BSAI.

After the effective date 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 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 Alaska plaice in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of June 2, 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: June 3, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–14133 Filed 6–3–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA483

Fisheries of the Exclusive Economic Zone Off Alaska; Alaska Plaice 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; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve to the initial total allowable catch of Alaska plaice in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fisheries to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the Bering Sea and Aleutian Islands management area.

DATES: Effective June 3, 2011, through 2400 hrs, Alaska local time, December 31, 2011. Comments must be received at the following address no later than 4:30 p.m., Alaska local time, June 20, 2011.

ADDRESSES: Send comments to Glenn Merrill, Regional Administrator, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by 0648–XA483 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P. O. Box 21668, Juneau, AK 99802.
- *Fax:* (907) 586–7557, Attn: Ellen Sabastion

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

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 2011 initial total allowable catch (ITAC) of Alaska plaice in the BSAI was established as 13,600 metric tons (mt) by the final 2011 and 2012 harvest specifications for groundfish of the BSAI (76 FR 11139, March 1, 2011). In accordance with § 679.20(a)(3) the Regional Administrator, Alaska Region, NMFS, has reviewed the most current available data and finds that the ITAC for Alaska plaice in the BSAI needs to be supplemented from the non-specified reserve in order to promote efficiency in the utilization of fishery resources in the BSAI and allow fishing operations to continue.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the non-specified reserve of groundfish 2,400 mt to the Alaska plaice ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(i) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specifications of the acceptable biological catch in the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

The harvest specification for the 2011 Alaska plaice ITAC included in the harvest specifications for groundfish in the BSAI is revised as follows: 16,000 mt for Alaska plaice in the BSAI.

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) and § 679.20(b)(3)(iii)(A) 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 apportionment of the non-specified reserves of groundfish to the Alaska plaice fishery in the BSAI. 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 June 2, 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.

Under § 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see **ADDRESSES**) until June 20, 2011.

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: June 3, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–14137 Filed 6–3–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 110
Wednesday, June 8, 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 Part 35

[NRC–2008–0071 and NRC–2008–0175]

RIN 3150–AI26, 3150–AI63

Medical Use Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary draft rule language and notice of public workshops; correction.

SUMMARY: This document corrects another document that was published in the **Federal Register** on May 20, 2011 (76 FR 29171). That document announces plans to hold public workshops to solicit comments on certain issues under consideration to amend the medical use regulations, provides the date of the first of the two public workshops, and notices the availability of preliminary draft rule language concerning the U.S. Nuclear Regulatory Commission's (NRC) proposed amendments to the medical use regulations. This document is necessary to correct a Regulatory Identifier Number (RIN) that appears in the heading, and to add additional information regarding the availability of the preliminary draft rule language.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555–0001, e-mail: *Cindy.Bladey@nrc.gov,* telephone: 301–492–3667.

SUPPLEMENTARY INFORMATION: At the top of the first column of Page 29171 of **Federal Register** document 2011–12048, published on May 20, 2011 (76 FR 29171), in the heading of the document, "RIN 3150–AI28" is corrected to read "RIN 3150–AI26".

Also, in the "Background Information" section, at the top of the first column of Page 29176 of the same document, before the last paragraph of the document, add the following three paragraphs:

The NRC is making a preliminary version of this draft rule language available to inform stakeholders of the current status of this proposed rulemaking. The NRC is inviting stakeholders to comment on the preliminary draft rule language. The preliminary draft rule language may be subject to significant revisions during the rulemaking process prior to publication for formal comment as a proposed rule. Public input at this stage will help inform the development of the proposed rule.

The NRC will review and consider any comments received; however, the NRC will not formally respond to any comments received at this pre-rulemaking stage. As appropriate, the Statement of Considerations for the proposed rule may briefly discuss any substantive changes made to the proposed rule language as a result of comments received on this preliminary version. Stakeholders will also have an additional opportunity to comment on the rule language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedures Act. The NRC will respond to such comments in the Statement of Considerations for the final rule.

The NRC may post updates to the preliminary proposed rule language on the Federal rulemaking Web site under Docket ID NRC–2008–0175. Regulations.gov allows members of the public to set-up e-mail alerts so that they may be notified when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the e-mail alerts can be found at *http://www.regulations.gov.* To do so, navigate to a docket folder you are interested in and then click the "Sign up for E-mail Alerts" link.

Dated at Rockville, Maryland, this 3rd day of June, 2011.

For the Nuclear Regulatory Commission.

Leslie Terry,

Acting Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–14060 Filed 6–7–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0479; Directorate Identifier 2010–NM–154–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes; Equipped With Certain Cockpit Door Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.

After incorporation of Modsum 8Q900267 * * *, an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. * * *

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

DATES: We must receive comments on this proposed AD by July 25, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room

W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Andreas Rambalakos, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7345; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0479; Directorate Identifier 2010–NM–154–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On June 5, 2006, we issued AD 2006–12–16, Amendment 39–14642 (71 FR 34006, June 13, 2006). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2006–12–16, an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. The Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2005–34R1, dated August 15, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.
>
> After incorporation of Modsum 8Q900267 * * *, an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. Therefore, * * * this [Canadian] directive is issued to require rework of the cockpit door striker plate and replacement of the latch block for the affected aircraft serial numbers. * * *

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier Inc. has issued Service Bulletins 8–52–58, Revision A, dated November 17, 2006; and 8–52–61, dated October 20, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Change to Table 3 of the Existing AD

We have revised Table 3 of the existing AD to remove reference to Bombardier Series 100/300 Modification Summary (Modsums) 8Q200015, 8Q420101, and 8Q420143 in the column labeled "One approved method for doing these actions." However, we have approved De Havilland Aircraft of Canada, Limited, Modification 8/2337 as an additional source of guidance for reworking the cockpit door emergency release. We have approved De Havilland Aircraft of Canada, Limited, Modification 8/3339 as an additional source of guidance for installing a new label regarding the alternate release of the door. We have also approved Bombardier Series 100/300 Modsum 8Q200015 as an additional source of guidance for installing the cockpit door. Operators may contact the Manager, New York Aircraft Certification Office, ANE–170, for information regarding the use of Bombardier Series 100/300 Modsum 8Q200015 for installing the cockpit door, as required by paragraph (h) of this AD. We have not included Bombardier Series 100/300 Modsums 8Q420101 and 8Q420143 in this AD because they are optional installations of the emergency locator transmitter and blow-out panel on the cockpit door and were done during production.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 17 products of U.S. registry.

The actions that are required by AD 2006–12–16 and retained in this proposed AD take between 3 and 6 work-hours per product, depending on

the airplane configuration, at an average labor rate of $85 per work hour. Required parts cost about $2,000 per product. Based on these figures, the estimated cost of the currently required actions is between $2,255 and $2,510 per product.

We estimate that it would take about 3 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $2,000 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $38,335, or $2,255 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14642 (71 FR 34006, June 13, 2006) and adding the following new AD:

Bombardier Inc.: Docket No. FAA–2011–0479; Directorate Identifier 2010–NM–154–AD.

Comments Due Date

(a) We must receive comments by July 25, 2011.

Affected ADs

(b) This AD supersedes AD 2006–12–16, Amendment 39–14642.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category; serial numbers (S/Ns) 003 through 557 inclusive; equipped with cockpit door installation part numbers (P/Ns) identified in Table 1 of this AD.

TABLE 1—COCKPIT DOOR INSTALLATIONS AFFECTED BY THIS AD

P/N	Dash number(s)
82510074	All
82510294	All
82510310	–001
8Z4597	–001
H85250010	All
82510700	All
82510704	All except –502 and –503

Subject

(d) Air Transport Association (ATA) of America Code 52: Doors.

Reason

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

During structural testing of the cockpit door, it was observed that the door lower hinge block rotated which resulted in disengagement of the mating hinge pin and excessive door deflection. The lower hinge block rotated because it was attached to its support structure with only one attachment bolt, which prevented it from reacting to any moment force. This condition, if not corrected could result in breakage and uncontrolled release of the cockpit door under certain decompression situations.

After incorporation of Modsum 8Q900267 * * * an operator reported a failure to complete the cockpit door removal function test. This condition, if not corrected, could result in the inability to remove the cockpit door for emergency egress. * * *

Compliance

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

Restatement of Requirements of AD 2006–12–16, With New Service Information

Modification

(g) Within 24 months after July 18, 2006 (the effective date of AD 2006–12–16), modify the cockpit door from a single-point attachment to a two-point attachment in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 2 of this AD. For airplane serial numbers 452, 464, 490, 506, and 508 through 557 inclusive: After the effective date of this AD, use Bombardier Service Bulletin 8–52–58, Revision A, dated November 17, 2006.

TABLE 2—BOMBARDIER SERVICE BULLETINS FOR MODIFICATION REQUIRED BY PARAGRAPH (G) OF THIS AD

Use this Bombardier Service Bulletin—	For airplane serial numbers—
8–52–54, Revision A, dated November 5, 2004	003 through 451 inclusive, 453 through 463 inclusive, 465 through 489 inclusive, 491 through 505 inclusive, and 507.
8–52–58, dated May 12, 2004, or Revision A, dated November 17, 2006.	452, 464, 490, 506, and 508 through 557 inclusive.

Note 1: Bombardier Service Bulletin 8–52–54 refers to Bombardier Series 100/300 Modification Summary (Modsum) 8Q100859 as an additional source of guidance for installing a hinge pin with a two-point attachment. Bombardier Service Bulletin 8–52–58 refers to Bombardier Series 100/300 Modsum 8Q900267 as an additional source of guidance for reworking and installing the cockpit door, and reworking the lower hinge attachment to provide a downward-facing pin with a two-point attachment.

Prior/Concurrent Requirements

(h) Prior to or concurrently with the modification in paragraph (g) of this AD, do the applicable actions specified in Table 3 of this AD, according to a method approved by either the Manager, New York Aircraft Certification (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

TABLE 3—BOMBARDIER SERVICE BULLETINS FOR REQUIREMENTS OF PARAGRAPH (H) OF THIS AD

For airplanes affected by Bombardier Service Bulletin—	That have these serial numbers—	Do these actions—
8–52–54, Revision A, dated November 5, 2004	003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.	Rework the cockpit door emergency release.
	.....	Install a new label regarding alternate release of the door.
8–52–58, dated May 12, 2004	452, 464, 490, 506, and 508 through 557 inclusive.	Install the cockpit door.

Note 2: Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004, refers to De Havilland Aircraft of Canada, Limited, Modification 8/2337 as an additional source of guidance for reworking the cockpit door emergency release; and Modification 8/3339 as additional source of guidance for installing a new label regarding alternate release of the door, on airplanes having serial numbers 003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive.

Note 3: Bombardier Service Bulletin 8–52–58, dated May 12, 2004; and Revision A, dated November 17, 2006; refer to Bombardier Modsum 8Q200015, as an additional source of guidance for installing the cockpit door, on airplanes having serial numbers 452, 464, 490, 506, and 508 through 557 inclusive.

Actions Done In Accordance With Previous Revision of Service Bulletin

(i) Actions done before July 18, 2006, in accordance with Bombardier Service Bulletin 8–52–54, dated May 12, 2004, are acceptable for compliance with the corresponding requirements in paragraph (g) of this AD.

New Requirements of This AD

(j) For airplanes having S/N 452, 464, 490, 506, and 508 through 557 inclusive, and on which the requirements in paragraph (g) of this AD have been done as of the effective date of this AD: Within 12 months after the effective date of this AD rework the cockpit door striker plate and replace the latch block, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–52–61, dated October 20, 2006.

(k) For airplanes having S/Ns 452, 464, 490, 506, and 508 through 557 inclusive, and on which the requirements in paragraph (g) of this AD have not been done as of the effective date of this AD: Prior to or concurrently with doing the modification required in paragraph (g) of this AD, rework the cockpit door striker plate and replace the latch block, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–52–61, dated October 20, 2006.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

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

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

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2005–34R1, dated August 15, 2007; Bombardier Service Bulletin 8–52–54, Revision A, dated November 5, 2004; Bombardier Service Bulletin 8–52–58, Revision A, dated November 17, 2006; and Bombardier Service Bulletin 8–52–61, dated October 20, 2006; for related information.

Issued in Renton, Washington, on May 27, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–14091 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0478; Directorate Identifier 2010–NM–138–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–103, B4–203, and B4–2C Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than the limit value imposed by the MLG manufacturer.

This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads

affect the structural integrity of the MLG and could lead to MLG failure.

* * * * *

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

DATES: We must receive comments on this proposed AD by July 25, 2011.

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

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

For Airbus service information identified in this proposed AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* For Messier-Dowty service information identified in this proposed AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone 703–450–8233; fax 703–404–1621; Internet *https://techpubs.services/messier-dowty.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0478; Directorate Identifier 2010–NM–138–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

On November 29, 2007, we issued AD 2007–25–15, Amendment 39–15297 (72 FR 69601, December 10, 2007). That AD required actions intended to address an unsafe condition on all Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes.

Since we issued AD 2007–25–15, the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0102, dated June 8, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than the limit value imposed by the MLG manufacturer.
>
> This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads affect the structural integrity of the MLG and could lead to MLG failure.
>
> To address and correct this unsafe condition, EASA issued AD 2006–0075 (now at Revision 2) [which corresponds to FAA AD 2007–25–15] to require repetitive inspections of the retraction actuator sliding rod as installed on A300, A300–600 and A300–600ST aeroplanes and, depending on findings, repair or replacement of the affected parts.
>
> Since this event, studies have been performed by Airbus, the consequences of which are that for A300 aeroplanes, a new inspection program (new threshold and interval) has been established.
>
> For the reason described above, this new [EASA] AD retains the requirements of AD 2006–0075R2, which is superseded and requires the accomplishment of the repetitive inspections and associated corrective actions at the new intervals. In addition, the Airbus A300 Aircraft Maintenance Manual (AMM) Chapter 12–22–32 (associated to Maintenance Planning Document (MPD) task 321112–0505–1) has been revised to introduce a greasing action at the level of the pick-up jack fitting. Consequently, this AD also requires the repetitive lubrication task.
>
> For A300–600 and A300–600ST aeroplanes, the analyses have shown that, due to design differences, the loads induced on the MLG attachments are within acceptable margins. For that reason, this AD does not apply to those aeroplanes which were previously included in the applicability of EASA AD 2006–0075R2.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–32–0450, including Appendix 1, Revision 02, dated July 28, 2009; and Task 321112–0505–1 of the A300 Maintenance Planning Document, Revision 30, dated April 1, 2010. Messier-Dowty has issued Special Inspection Service Bulletin 470–32–806, dated October 27, 2005. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 3 products of U.S. registry.

We estimate that it would take about 6 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,530, or $510 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $0, for a cost of $510 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–15297 (72 FR 69601, December 10, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2011–0478; Directorate Identifier 2010–NM–138–AD.

Comments Due Date

(a) We must receive comments by July 25, 2011.

Affected ADs

(b) This AD supersedes AD 2007–25–15, Amendment 39–15297.

Applicability

(c) This AD applies to all Airbus Model A300 B4–103, B4–203, and B4–2C airplanes; certificated in any category; equipped with MLG retraction actuator having part number (P/N) C23129 fitted with sliding rod P/N C69029–2 or C69029–3.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

One operator reported a failure of the MLG [main landing gear] retraction actuator sliding rod. This incident occurred at a number of operating flight cycles lower than the limit value imposed by the MLG manufacturer.

This condition, if not detected and corrected, results in undampened extension of the MLG, leading to higher than usual loads on the MLG attachment. Higher loads affect the structural integrity of the MLG and could lead to MLG failure.

* * * * *

Compliance

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

Revised Compliance Times for Inspection of MLG Retraction Actuator and Corrective Actions

(g) At the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Remove the MLG retraction actuator having P/N C23129 and do a detailed and high frequency eddy current inspection for defects that exceed the criteria defined in Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, of the retraction actuator sliding rods having P/N C69029–2 or C69029–3, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009.

(1) For airplanes on which the retraction actuator sliding rod has accumulated 12,000 or fewer total flight cycles as of the effective date of this AD: Inspect at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Before the accumulation of 12,000 total flight cycles on the retraction actuator sliding rod.

(ii) Within 2,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first.

(2) For airplanes on which the retraction actuator sliding rod has accumulated more than 12,000 total flight cycles, and 22,000 or fewer total flight cycles, as of the effective date of this AD: Inspect at the earliest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Before the accumulation of 23,000 total flight cycles on the retraction actuator sliding rod.

(ii) Within 2,000 flight cycles after the effective date of this AD.

(iii) Within 24 months after the effective date of this AD.

(3) For airplanes on which the retraction actuator sliding rod has accumulated more than 22,000 total flight cycles as of the effective date of this AD: Inspect within 1,000 flight cycles or 12 months after the effective date of this AD, whichever occurs first.

(h) Thereafter, repeat the inspection required by paragraph (g) of this AD at intervals not to exceed 12,000 flight cycles.

(i) If, during any inspection required by paragraph (g) or (h) of this AD, any defect is detected that exceeds the criteria defined in Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005, before further flight, replace the affected sliding rod with a serviceable unit in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009.

(j) Before the accumulation of 32,000 flight cycles on any retraction actuator sliding rod, it must be replaced with a serviceable unit

in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009. Parts removed from an airplane as required by this paragraph must be returned to Messier-Dowty within 30 days after removing the part from the airplane.

(k) As of the effective date of this AD, any MLG retraction actuator sliding rod having P/N C69029–2 or C69029–3 that has accumulated less than 32,000 total flight cycles, may be installed on any airplane, provided that the inspections required by paragraphs (g) and (h) of this AD are accomplished at the compliance times specified in paragraphs (g) and (h) of this AD and all applicable replacements required by paragraphs (i) and (j) of this AD are done.

Lubrication of the MLG Assembly

(l) Within 1,500 flight hours after the effective date of this AD: Clean and lubricate the MLG assembly, in accordance with Task 321112–0505–1 of the Airbus A300 Maintenance Planning Document, Revision 30, dated April 1, 2010. Repeat the cleaning and lubrication thereafter at intervals not to exceed 1,500 flight hours.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections accomplished before the effective date of this AD, in accordance with Airbus Service Bulletin A300–32–0450, dated December 1, 2005; or Airbus Mandatory Service Bulletin A300–32–0450, Revision 01, dated May 10, 2006; are acceptable for compliance with the corresponding requirements of this AD.

FAA AD Differences

Note 1 : This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM–116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–25–15, amendment 39–15297, are approved as AMOCs for the corresponding provisions of this AD.

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

Related Information

(o) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0102, dated June 8, 2010; Airbus Mandatory Service Bulletin A300–32–0450, Revision 02, dated July 28, 2009; Messier-Dowty Special Inspection Service Bulletin 470–32–806, dated October 27, 2005; and Task 321112–0505–1 of the Airbus A300 Maintenance Planning Document, Revision 30, dated April 1, 2010; for related information.

Issued in Renton, Washington, on May 27, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–14094 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR 1460

Petition Requesting Safeguards for Glass Fronts of Gas Vented Fireplaces

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The U.S. Consumer Product Safety Commission ("Commission" or "we") has received a petition (CP 11–1) requesting that the Commission initiate rulemaking to require safeguards for glass fronts of gas vented fireplaces. We invite written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by August 8, 2011.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2011–0028, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and petition number for this rulemaking. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Carol Pollack-Nelson, Ph.D. ("petitioner"), dated May 23, 2011, requesting that we initiate rulemaking to require safeguards for glass fronts of gas vented fireplaces. We are docketing this request as a petition under the Consumer Product Safety Act. 15 U.S.C. 2056 and 2058. Petitioner notes that the industry standard for gas vented fireplace heaters allows glass fronts to reach temperatures of 500 degrees Fahrenheit, and that these glass fronts are accessible to children. Petitioner claims that, according to the U.S. Consumer Product Safety Commission's National Electronic Injury Surveillance System database (NEISS), more than 2,000 children ages 0–5 years suffered burn injuries on gas fireplaces in the period between 1999 and March 2009. Petitioner believes the hazard posed by gas fireplaces is due to a combination of factors, "including the high surface temperature of the fireplace glass, the accessible location of the glass front, the attractiveness of fire to young children, and the lack of consumer awareness of the hazard." Petitioner states that passive interventions, such as an "integral safety screen," are needed to protect children. Petitioner asks the Commission to develop a mandatory standard for gas fireplaces that requires

a protective barrier, guard or other device for any accessible surface that, if contacted, is hot enough to cause severe burns.

Subsequent to the receipt of this petition, the Commission received a submission from Mr. William S. Lerner, also requesting that the Commission initiate rulemaking regarding glass fronts of gas fireplaces. Mr. Lerner asks the Commission to require a "high temperature warning system," which will "project a clear high temperature alert onto the glass front of the fireplace that will remain visible from the time the fireplace is lit until the glass is cool enough to touch safely." We also seek comment on his proposal.

Interested parties may obtain a copy of the petition and subsequent submission by writing or calling the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923. Copies of these documents are also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, MD, or from the Commission's Web site at: *http://www.cpsc.gov.*

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2011–14020 Filed 6–7–11; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

Tribal Consultation on No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee—Draft Report

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: The Bureau of Indian Affairs is announcing that it will conduct five consultation meetings with Indian tribes to obtain oral and written comments concerning a draft report to provide Congress and the Secretary of the Interior comprehensive information about the conditions and funding needs for facilities at Bureau-funded schools, as required by the No Child Left Behind Act of 2001. See the **SUPPLEMENTARY INFORMATION** section of this notice for details.

DATES: The tribal consultation meetings will take place on Wednesday, June 15, 2011; Thursday, June 16, 2011; Thursday, June 30, 2011; Wednesday, July 13, 2011; and Tuesday, July 19, 2011.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Congressional mandate set out in the No Child Left Behind Act of 2001, at 25 U.S.C. 2005(a)(5), the Secretary of the Interior established the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee in accordance with the Federal Advisory Committee Act (5 U.S.C. Appx. 1–16) and the Negotiated Rulemaking Act (5 U.S.C. 561–570a). The Committee is chartered to prepare and submit to the Secretary a catalog of the conditions at Bureau-funded schools, and to prepare reports covering: the school replacement and new construction needs at Bureau-funded school facilities; a formula for the equitable distribution of funds to address those needs; a list of major and minor renovation needs at those facilities; and a formula for equitable distribution of funds to address those needs. The reports are to be submitted to Congress and to the Secretary. All Committee documents that are available to the public can be viewed at *http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm* in accordance with the Federal Advisory Committee Act.

The purpose of the consultation, as required by 25 U.S.C. 2011(b), is to provide Indian tribes, Indian school boards, Indian organizations, parents, student organizations, school employees, Bureau employees, and other interested parties with an opportunity to comment on the draft report prepared by the Committee.

II. Report Details

The public may download and print a copy of the report, located at *http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm* or *http://www.bia.gov/WhoWeAre/AS-IA/ORM/Rulemaking/index.htm.*

III. Meeting Details

The Bureau of Indian Affairs will hold tribal consultation meetings on the following schedule:

Date	Time	Location
Wednesday, June 15, 2011	9 a.m.–4 p.m	Navajo Nation, Department of Diné Education, Education Center (Auditorium), Morgan Blvd.-Building 2556, Window Rock, AZ 86515.
Thursday, June 16, 2011	9 a.m.–4 p.m	Muckleshoot Tribal School, Cafeteria, 15209 SE 376th Street, Auburn, WA 98092.
Thursday, June 30, 2011	9 a.m.–4 p.m	Wild Horse Pass Hotel and Casino, Acacia C–D Room, 5040 Wild Horse Pass Blvd., Chandler, AZ 85226.
Wednesday, July 13, 2011	9 a.m.–4 p.m	Rushmore Plaza Civic Center, Alpine-Ponderosa Room, 444 N. Mt. Rushmore Road, Rapid City, SD 57701.
Tuesday, July 19, 2011	9 a.m.–4 p.m	Miccosukee Resort and Gaming, Ballroom C, 500 SW 177th Avenue, Miami, FL 33194.

Written comments will be accepted through July 29, 2011, and may be sent to the Designated Federal Officer listed in the **FOR FURTHER INFORMATION CONTACT** section above. All tribal consultation meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: May 31, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

[FR Doc. 2011–14038 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Chapter III

Regulatory Review Schedule

AGENCY: National Indian Gaming Commission.

ACTION: Notice of additional regulatory groups to be discussed at tribal consultations.

SUMMARY: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that the NIGC was conducting a comprehensive review of all its regulations and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultation meetings and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule setting out detailed consultation schedules and review processes. NIGC divided the regulations to be reviewed into five groups, and each group will be reviewed in three phases, the Drafting Phase, the Notice of Proposed Rulemaking phase, and the Notice of Final Rule Phase.

The purpose of this document is to add regulatory groups to five scheduled tribal consultations.

DATES: See **SUPPLEMENTARY INFORMATION** below for dates and locations of consultations that will include additional regulatory groups for discussion.

FOR FURTHER INFORMATION CONTACT: Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. *Telephone:* 202–632–7003; *e-mail: reg.review@nigc.gov.*

SUPPLEMENTARY INFORMATION: On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that it was conducting a comprehensive review of all regulations promulgated to implement 25 U.S.C. 2701–2721 of the Indian Gaming Regulatory Act (IGRA) and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultation meetings and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule in the **Federal Register** setting out detailed consultation schedules and review processes. (76 FR 18457, April 4, 2011).

The Commission's regulatory review process establishes a detailed tribal consultation schedule with a description of the regulation groups to be covered at each consultation. This document advises the public that the agendas of the following tribal consultations are amended to include review of all five regulatory groups.

Consultation date	Event	Location	Regulation group(s)
July 20–21, 2011	NIGC Consultation—Southwest	Route 66 Casino Hotel, Albuquerque, NM.	1, 2, 3, 4, 5
July 28–29, 2011	NIGC Consultation—Northeast	DOI South Auditorium, Washington, DC.	1, 2, 3, 4, 5
Aug. 18–19, 2011	Oklahoma Indian Gaming Association Conference	Tulsa, OK	1, 2, 3, 4, 5
Aug. 25–26, 2011	NIGC Consultation—Southwest	Wild Horse Resort Casino, Scottsdale, AZ.	1, 2, 3, 4, 5
Sept. 7–8, 2011	NIGC Consultation—United Tribes International Powwow	Radisson Hotel, Bismarck, ND	1, 2, 3, 4, 5

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov.* Please RSVP at *consultation.rsvp@nigc.gov.*

Please note that the Commission intends to post all written comments received during the regulatory review process on the Tribal Consultation webpage of the NIGC Web site located at *http://www.nigc.gov.*

Authority: 25 U.S.C. 2706(b)(10); E.O. 13175.

Dated: June 3, 2011, Washington, DC.

Tracie L. Stevens,

Chairwoman.

Steffani A. Cochran,

Vice-Chairwoman.

Daniel J. Little,

Associate Commissioner.

[FR Doc. 2011–14100 Filed 6–7–11; 8:45 am]

BILLING CODE 7565–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0429; FRL–9316–8]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from brandy and wine aging operations. We are approving a local rule that regulates

these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 8, 2011.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2011–0429, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and 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), and some may not be publicly available in either location (e.g., 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: Christine Vineyard, EPA Region IX, (415) 947–4125, *vineyard.christine@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4695	Brandy Aging and Wine Aging Operations	09/17/09	05/17/10

On June 8, 2010, EPA determined that the submittal for SJVUAPCD Rule 4695 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

There are no previous versions of Rule 4695 in the SIP.

C. What is the purpose of the submitted rule?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. Rule 4695 limits VOC emissions from large brandy aging and wine aging operations. EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an extreme ozone nonattainment area (see 40 CFR part 81), so Rule 4695 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

3. "Reasonably Available Control Technology (RACT) Demonstration for Ozone State Implementation Plans (SIP)" SJVAPCD, April 16, 2009.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule 4695 Section 5.5 requires all brandy aging operations be conducted in a warehouse that is initially certified and maintained as a Permanent Total Enclosure (PTE) using the requirements of EPA Method 204. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies Rule 4695 but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: May 19, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2011–14201 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[EPA–HQ–OPP–2009–0609; FRL–8874–8]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 8, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0609 and the pesticide petition number (PP), by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0609 and the PP. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:

(703) 308–8715; e-mail address: *mendelsohn.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

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

2. *Tips for preparing your comments. When submitting comments, remember to:*

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

In accordance with 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov.*

As required by FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

Amended Tolerance Exemption

PP1G7868. Syngenta Seeds Inc., P.O. Box 12257, Research Triangle Park, North Carolina 27709, proposes to extend an exemption from the requirement of a tolerance for residues of the plant-incorporated protectant, *Bacillus thuringiensis* eCry3.1Ab protein in corn, in or on the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop under 40 CFR 174.532; March 16, 2011; 76 FR 14289 (FRL–8866–5) when *Bacillus thuringiensis* eCry3.1Ab protein in corn is used as a plant-incorporated protectant in accordance with the terms of Experimental Use Permit 67979–EUP–8. The petitioner believes no analytical method is needed because a temporary exemption from the requirement of a tolerance is being sought.

List of Subjects in 40 CFR Part 174

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 24, 2011.

Keith A. Matthews,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2011–14190 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0360; FRL–8874–7]

Tetrachlorvinphos; Proposed Extension of Time-Limited Interim Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes the extension of time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos (Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on multiple commodities which will be identified later in this document, under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0360, must be received on or before August 8, 2011.

ADDRESSES: Submit your comments, identified by docket ID number EPA–HQ–OPP–2011–0360, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Tetrachlorvinphos; Proposed Extension of Time-Limited Interim Pesticides, Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

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FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; *telephone number:* (703) 306–0327; *fax number:* (703) 308–0029; *e-mail address: rodia.carmen@epa.gov.*

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vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

II. Background

Following the enactment of the Food Quality Protection Act of 1996 (FQPA), EPA reviewed and assessed under the new FQPA aggregate risk standard, the existing tolerances of 31 organophosphates (OPs), including tetrachlorvinphos (TCVP). In late December 2002, EPA reported the results of its assessment of TCVP tolerances in its Tolerance Reassessment Eligibility Decision (TRED) document, (67 FR 77491, December 18, 2002) (FRL–7279–2).

The TCVP TRED concluded that the TCVP livestock residue studies were not adequate, and recommended that the Agency require the registrant to conduct and submit new magnitude of residue (MOR) studies to support permanent TCVP tolerances. The TCVP TRED also recommended the Agency revoke 4 existing tolerances in commodities supporting TCVP uses that were no longer registered. Finally, the TRED recommended that the Agency use existing TCVP metabolism studies to modify 5 existing livestock tolerances (fat of cattle, hogs and poultry as well as eggs and milk fat) and establish 11 tolerances for additional tissues of cattle, hogs and poultry (such as meat, meat byproducts and kidney and liver). Specifically, the TRED recommended that EPA establish 16 TCVP tolerances as "time-limited for a period of 18 months * * * to permit sufficient time for the registrant to submit the required MOR studies." TCVP TRED at 41. On February 6, 2004, EPA issued a Generic Data Call-In Notice requiring the registrant to conduct and submit new livestock MOR studies for meat, milk, poultry, and eggs.

On February 6, 2008, pursuant to section 408(e) of the FFDCA, EPA proposed to revoke, modify and establish tolerances for 10 pesticides, including TCVP (73 FR 6867) (FRL–8345–2). EPA explained that the proposed tolerance actions were a "follow-up to the Agency reregistration program under Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and tolerance reassessment program under FFDCA section 408(q)." *Id.* As such, EPA proposed to implement the tolerance recommendations made in the TCVP TRED by:

(1) Revising the tolerance expression in 40 CFR 180.252 to regulate the residues of TCVP and its metabolites;

(2) Revise and establish 16 time-limited TCVP livestock tolerances to reflect levels of TCVP and its metabolites in various metabolism studies; and

(3) Revoke tolerances for residues of TCVP for goat fat and horse fat. Specifically, EPA proposed to establish the 16 TCVP tolerances for "18 months to permit time for the submission of additional MOR data to support permanent tolerances." (73 FR 6867, February 6, 2008). Because the Agency was taking action to establish tolerances in/on beef cattle, hog and poultry commodities, EPA determined that the exception that permitted the use of TCVP as an additive to beef cattle, dairy cattle, horse and swine feed at certain rates was no longer necessary. On September 17, 2008, EPA finalized the rule as proposed, establishing, among other things, 16 time-limited tolerances for TCVP with an expiration date of March 17, 2010 (73 FR 53732) (FRL–8375–2). For both the proposal and the final rule, EPA determined that the "increased tolerances and new tolerances to be established are safe; *i.e.,* there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue." (73 FR 53732, September 17, 2008).

It was EPA's intention that upon submission of the required TCVP MOR studies, the time-limited tolerances would be extended to allow EPA sufficient time to review the data with the expectation that the data would support the establishment of permanent tolerances. Prior to March 17, 2010, the registrant did in fact submit MOR data in cattle (MRID 47193001), MOR data in poultry (MRID 47589301), and the livestock validation methodology (MRID 47369201). However, due to a mistake on the part of EPA, the data were not reviewed in a timely manner. Compounding this error, EPA also failed to extend the time-limited tolerances to allow for the Agency to review the data and make a determination with respect to converting the time-limited tolerances into permanent tolerances.

Accordingly, in order to remedy the Agency's mistake and to be consistent with its original proposal and final rule establishing the TCVP time-limited tolerances, EPA is proposing to extend the expired time-limited tolerances for another 18 months to allow EPA to review the livestock MOR data submitted by the registrant as well as subsequent submissions, including storage stability data (MRID 47589301) to support the previously submitted MOR data in poultry, storage stability data (MRID 48378101) to support the previously submitted MOR data in cattle, and a waiver request for MOR data in swine.

In the TCVP TRED, EPA "found that, apart from consideration of the potential cumulative risks from all of the OPs, each of the tolerances would meet the FFDCA safety standard. EPA has not considered the impact of these cumulative risks in the reassessment of these tolerances and has determined that these tolerances make, at most, only a negligible contribution to the overall risks from OPs. Therefore, these tolerances can be maintained regardless of the outcome of the OP cumulative assessment and any potential regulatory action taken as a result of that assessment. Accordingly, EPA "believes it is appropriate to consider these tolerances reassessed for the purposes of section 408(q) of FQPA as of July 23, 2002." (67 FR 52985, August 14, 2002) (FRL–7192–4).

Among the factors EPA considered in making the decision to reassess these tolerances were extensive livestock feeding/metabolism studies as well as extensive monitoring data that was in agreement with the livestock feeding/metabolisms studies. In sum, there were very few detectable residues in the OP monitoring data for animal commodities. EPA relied upon extensive monitoring data from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) and U.S. Food and Drug Administration's (FDA) Total Diet Study (TDS) covering residues of multiple OPs in meats and poultry. The residue monitoring data showed infrequent detections, and those residues were detected at low levels. Out of approximately 400 meat samples analyzed by the TDS for multiple OPs from 1991–1999, only 9 samples detected any OP residues (the residues ranged between 0.002 ppm and 0.009 ppm). Out of the approximately 500 poultry samples analyzed by PDP for multiple OPs from 1997–2000, only 1 sample detected an OP residue (0.01 ppm) for a pesticide that currently has a tolerance. *Id.* For milk and eggs, extensive monitoring data were available from USDA's PDP and FDA's TDS. The residue monitoring data showed no detectable OP residues in milk (there was only 1 trace sample detected out of approximately 1,800 samples analyzed by PDP for multiple OPs from 1996–1998). The residue monitoring for eggs also showed no detectable OP residues (only 1 trace sample was detected out of approximately 1,300 samples analyzed by TDS for multiple OPs from 1992–1998). *Id.*

In July of 2006, EPA completed the OP cumulative risk assessment (CRA), using the best available monitoring data. The updated USDA PDP data indicated that OP residues would not be expected to occur in significant amounts in meat

or milk. The analysis in the OP CRA indicated that animal commodities do not significantly contribute to OP dietary exposure and total OP dietary risk. This characterization was supported by additional information, including the updated TDS data. On July 31, 2006, EPA finalized the TCVP reregistration eligibility determination by concluding that the pesticide tolerances covered by the IREDs and TREDs that were pending the result of the OP CRA—including TCVP tolerances, meet the safety standard under section 408(b)(2) of the FFDCA.

In 2008, EPA confirmed that USDA PDP analyses of livestock commodities, including milk, poultry, pork, and beef, through 2005 showed virtually no detectable residues of TCVP (except for 2 lone milk samples detected at levels just above the LOQ (less than one part per billion), detected out of approximately 5,200 samples analyzed by PDP for multiple OPs from 2001–2005. Furthermore, the USDA Food Safety and Inspection Service (FSIS) monitors meat for residues of tetrachlorvinphos, and there have been no detections of tetrachlorvinphos from 2000–2009.

III. Proposal

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to extend the dates of expiration/revocation for the time-limited interim tolerances for the combined residues of the insecticide tetrachlorvinphos (Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*) at 0.2 parts per million (ppm); cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; cattle, meat byproducts, except kidney and liver at 1.0 ppm; egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*) at 0.2 ppm; hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 1.0 ppm; hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.5 ppm; hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; hog, meat byproducts, except kidney and liver at 1.0 ppm; milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 0.05 ppm; poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*) at 7.0 ppm; poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*) at 2.0 ppm; poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*) at 3.0 ppm; and poultry, meat byproducts, except liver at 2.0 ppm, for a period of 18 months following the date of publication of the final rule in the **Federal Register,** in order to provide the Agency with additional time to complete the reviews of the submitted livestock MOR data, storage stability data, and the waiver request for the swine MOR data.

IV. Statutory and Executive Order Reviews

This proposed rule establishes a tolerance under section 408(e) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances are being established under section 408(e) of the FFDCA, such as the tolerance in this proposed rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "Tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000). Executive Order 3175 requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes." This proposed rule will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as

specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: May 26, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.252 is revised to read as follows:

§ 180.252 Tetrachlorvinphos; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide tetrachlorvinphos (Z)-2-chloro-1-(2,4,5-trichlorophenyl) vinyl dimethyl phosphate, including its metabolites, 1-(2,4,5-trichlorophenyl)-ethanol (free and conjugated forms), 2,4,5-trichloroacetophenone, and 1-(2,4,5-trichlorophenyl)-ethanediol, in or on the following commodities:

Commodity	Parts per million	Expiration/revocation date
Cattle, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*).	0.2	[date 18 months from the date of Final tolerance publication].
Cattle, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	1.0	[date 18 months from the date of Final tolerance publication].
Cattle, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	0.5	[date 18 months from the date of Final tolerance publication].
Cattle, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*).	2.0	[date 18 months from the date of Final tolerance publication].
Cattle, meat byproducts, except kidney and liver	1.0	[date 18 months from the date of Final tolerance publication].
Egg (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	0.2	[date 18 months from the date of Final tolerance publication].
Hog, fat (of which no more than 0.1 ppm is tetrachlorvinphos *per se*).	0.2	[date 18 months from the date of Final tolerance publication].
Hog, kidney (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	1.0	[date 18 months from the date of Final tolerance publication].
Hog, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	0.5	[date 18 months from the date of Final tolerance publication].
Hog, meat (of which no more than 2.0 ppm is tetrachlorvinphos *per se*).	2.0	[date 18 months from the date of Final tolerance publication].
Hog, meat byproducts, except kidney and liver	1.0	[date 18 months from the date of Final tolerance publication].
Milk, fat (reflecting negligible residues in whole milk and of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	0.05	[date 18 months from the date of Final tolerance publication].
Poultry, fat (of which no more than 7.0 ppm is tetrachlorvinphos *per se*).	7.0	[date 18 months from the date of Final tolerance publication].
Poultry, liver (of which no more than 0.05 ppm is tetrachlorvinphos *per se*).	2.0	[date 18 months from the date of Final tolerance publication].
Poultry, meat (of which no more than 3.0 ppm is tetrachlorvinphos *per se*).	3.0	[date 18 months from the date of Final tolerance publication].
Poultry, meat byproducts, except liver	2.0	[date 18 months from the date of Final tolerance publication].

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

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

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

[FR Doc. 2011–14211 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 84

[Docket Number NIOSH–109]

RIN 0920–AA04

Quality Assurance Requirements for Respirators; Notice of Withdrawal

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: The Department of Health and Human Services (HHS) is withdrawing its proposed rule to update the quality assurance and control requirements for the manufacture of respirators approved under 42 CFR Part 84 by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention and the Mine Safety and Health Administration (MSHA). NIOSH has reviewed the comments it received to the proposed rule and determined that additional analysis is needed to assess the economic impact of its proposed rule. NIOSH plans to seek further information and to consider possible alternative approaches.

DATES: The proposed rule published on December 10, 2008 (73 FR 75045) will be withdrawn as of June 8, 2011.

FOR FURTHER INFORMATION CONTACT: William Newcomb, NIOSH National Personal Protective Technology Laboratory (NPPTL), P.O. Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–4034 (this is

not a toll-free number), e-mail *byf6@cdc.gov.*

SUPPLEMENTARY INFORMATION: On December 10, 2008, HHS proposed a rule intended to update the quality assurance and control requirements for the manufacture of respirators approved under 42 CFR part 84 by NIOSH and MSHA (73 FR 75045). The comment period for the proposed rule originally closed on February 9, 2009 but was reopened and extended until April 10, 2009 (74 FR 9381), and subsequently extended to October 9, 2009 (74 FR 23815). NIOSH also held public meetings on its proposed rule on March 23, 2009 in Adelphi, Maryland and on March 30, 2009 in Los Angeles, California.

NIOSH has reviewed the transcripts of the public meetings and the written comments received. While the commenters were generally supportive of the need to update the quality assurance and control requirements, they raised questions about several areas of the proposed rule pertaining to its economic impact. NIOSH has decided that this issue requires additional consideration and further economic analysis before considering or proceeding with alternatives to the proposed rule. This action is consistent with Executive Order 13563 which requires Federal agencies to conduct a retrospective review of regulations to determine which rules may "be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives."

Although not required to do so by the Administrative Procedure Act or by the regulations of the Office of Federal Register, HHS believes the public interest is best served by withdrawing the proposed rule identified in this document. The withdrawal of the proposed rule identified in this document does not preclude HHS from reinitiating rulemaking in the future regarding quality assurance and control requirements for the manufacture of respirators approved under 42 CFR part 84. Should HHS decide to undertake such rulemaking sometime in the future, it will re-propose the action and provide new opportunities for comment.

For the reasons stated herein, the notice of proposed rulemaking published on December 10, 2008 is hereby withdrawn.

Dated: May 31, 2011.

Kathleen Sebelius

Secretary, Department of Health and Human Services.

[FR Doc. 2011–14186 Filed 6–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–BA68

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS announces that the Pacific Fishery Management Council (Council) has submitted Amendment 13 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) for review by the Secretary of Commerce. The intent of Amendment 13 is to ensure the FMP is consistent with NMFS advisory guidelines. The guidelines describe fishery management approaches to meet the objectives of National Standard 1 (NS1) of section 301 of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). National Standard 1 states "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield (OY) from each fishery for the U.S. fishing industry."

DATES: Comments on Amendment 13 must be received by August 8, 2011.

ADDRESSES: You may submit comments identified by 0648–BA68 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047, Attn: Joshua Lindsay.

Instructions: All comments received are a 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 prefer to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the CPS FMP as Amended through Amendment 13 and its associated Environmental Assessment/Regulatory Impact Review, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384 or the NMFS Southwest Region (Rodney McInnis or Joshua Lindsay) (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034 or Mike Burner, Pacific Fishery Management Council, at 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Council pursuant to the MSA, 16 U.S.C. 1801 *et seq.* Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations at 50 CFR part 660, subpart I.

The MSA requires each regional fishery management council to submit any amendment to an FMP to NMFS for review and approval, disapproval, or partial approval. The MSA also requires that NMFS, upon receiving an amendment to an FMP, publish notification in the **Federal Register** that the amendment is available for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, disapprove, or partially approve Amendment 13.

The MSA was amended in 2007 to include new requirements for ACLs and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On January 16, 2009, NMFS revised its guidelines implementing MSA National Standard 1 (74 FR 3178)

in response to these changes in the MSA. The revised guidelines explain NOAA's interpretation of the new statutory requirements for specifying ACLs at such levels that overfishing does not occur and that measures be taken to ensure accountability with these limits. The purpose of Amendment 13 is to amend the CPS FMP to ensure it is consistent with these revised advisory guidelines and to comply with the statute. Specifically, Amendment 13 would revise the framework process to set and adjust fishery specification and management measures, and would establish a framework for specifying new reference points such as ACLs and AMs, as well as other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs).

Amendment 13 revises the framework process currently in place to set and adjust fishery specifications and management measures and establishes a framework for specifying new reference points such as overfishing level (OFL), acceptable biological catch (ABC) and ACL, where necessary. This includes the mechanisms to set ACLs and the associated AMs to ensure they are not exceeded, control rules for determining ABC and other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs) and the development of Maximum Sustainable Yield proxies and/or OFLs for those stocks for which current biomass estimates are not available. Specifically, Amendment 13 would implement this new fishery specification framework, designed to better account for scientific and management uncertainty and to prevent overfishing, in the FMP through the following:

- Modify the existing harvest control rules for actively managed species to include a buffer or reduction in ABC relative to OFL to account for scientific uncertainty. This buffer will be determined during the annual management cycle through a combination of scientific advice from the Scientific and Statistical Committee (SSC) and a policy determination of the Council;
- Maintain the default harvest control rules for monitored stocks as modified to specify the new management reference points. ACLs would be specified for multiple years until such time as the species becomes actively managed or new scientific information becomes available. The value of 0.25 in the ABC control rule (a 75 percent buffer) will remain in use until recommended for modification by the SSC and approved by the Council;
- Add a mechanism for the use of sector-specific ACLs, ACTs and AMs, in the annual harvest and management specification process.

Amendment 13 also adds Pacific herring (*Clupea pallasii pallasii*) and jacksmelt (*Atherinopsis californiensis*) to the FMP as ecosystem component (EC) species. Although the incidental catch of these species within CPS fisheries is extremely small, the intent of this action is to monitor the catches of these species and report catch estimates in the annual Stock Assessment and Fishery Evaluation report along with other incidental catch. In addition to the current ecological considerations in the FMP, the amendment adds language to specify that the Council will include ecological considerations when reviewing and/or adopting status determination criteria, ACLs, and ACTs. Although not a change to the FMP, the Council reaffirmed that all management unit species (MUS) in the FMP, including those species currently categorized as monitored species and prohibited harvest species (krill), are "in the fishery" and therefore remain as MUS.

Public comments on Amendment 13 must be received by August 8, 2011, to be considered by NMFS in the decision whether to approve, disapprove, or partially approve Amendment 13. A proposed rule to implement Amendment 13 has been submitted for Secretarial review and approval. NMFS expects to publish and request public comment on the proposed regulation to implement Amendment 13 in the near future. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received during the comment period for the amendment, whether specifically directed to the amendment, or the proposed rule, will be considered in the approval/disapproval decision.

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

Dated: June 3, 2011.

Margo Schulze-Haugen,

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

[FR Doc. 2011–14150 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 76, No. 110
Wednesday, June 8, 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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 1, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *oira_submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal Plant and Health Inspection Service

Title: Environmental Monitoring Form.

OMB Control Number: 0579–0117.

Summary of Collection: The mission of the Animal and Plant Health Inspection Service (APHIS) is to provide leadership in ensuring the health and care of animals and plants, to improve the agricultural productivity and competitiveness, and to contribute to the national economy and the public health. The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq,* and the regulations of the Council on Environmental Quality, which implements the procedural aspects of NEPA (40 CFR 1500–1508). APHIS' regulations require APHIS to implement environmental monitoring for certain activities conducted for pest and disease, control and eradication programs. APHIS Form 2060, Environmental Monitoring Form, will be used to collect information concerning the effects of pesticide used in sensitive habitats.

Need and Use of the Information: APHIS will collect information on the number of collected samples, description of the samples, the environmental conditions at the collection site including wind speed and direction, temperature, humidity of rainfall, and topography. The supporting information contained on the APHIS form 2060 is vital for interpreting the laboratory tests APHIS conducts on its collected samples. If a sample was not accompanied by this form APHIS would have no way of knowing from which site the sample was taken. Failure to collect this information would prevent APHIS from actively monitoring the effects of pesticides in areas where the inappropriate use of these chemicals could eventually produce disastrous results for vulnerable habitats and species.

Description of Respondents: State, Local or Tribal Government; Individuals or households; Farms.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,500.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–14177 Filed 6–7–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 1, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Report of Supplemental Nutrition Assistance Program Issuance and Report of Commodity Distribution for Disaster Relief.

OMB Control Number: 0584–0037.

Summary of Collection: Disaster assistance through the Supplemental Nutrition Assistance Program (SNAP) is authorized by sections 402 and 502 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) and the temporary emergency provisions contained in Section 5 of the Food and Nutrition Act of 2008, and in 7 CFR part 280 of the SNAP regulations. This program is initiated in a SNAP project area by FNS when all or part of the area has been affected by a disaster. Food distribution in disaster situation is authorized under Section 32 of the Act of August 24, 1935. Surplus foods are made available by State distributing agencies for relief purposes to victims of natural disaster such as hurricanes, floods, tornadoes, etc. Distribution to these recipients is made primarily through such organizations as the American Red Cross or the Salvation Army. These organizations use surplus foods for both central feeding operations and for distribution to families in homes cut off from normal sources of food supply.

Need and Use of the Information: FNS will collect information through the use of forms FNS–292–A and B, which is used by the FNS Administrator, the Food Distribution Division, and the three SNAP divisions to monitor program activity, assess coverage provided to needy recipients, and assure the validity of requested commodity reimbursement and to prepare budget requests. If the information were not collected, FNS would be unable to monitor the issuance of SNAP benefits and the distribution of surplus foods during disaster situations.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 55.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 92.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–14179 Filed 6–7–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0025]

Notice of Request for Extension of Approval of an Information Collection; Phytosanitary Export Certification

AGENCY: Animal and Plant Health Inspection Service, USDA.

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

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the issuance of phytosanitary certificates for plants or plant products being exported to foreign countries.

DATES: We will consider all comments that we receive on or before August 8, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0025–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0025, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0025* or in our reading room, which 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.

FOR FURTHER INFORMATION CONTACT: For information on regulations for phytosanitary export certification for plants and plant products being exported to foreign countries, contact Mr. Christian Dellis, Deputy Director, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–5233. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Phytosanitary Export Certification.

OMB Number: 0579–0052.

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

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, provides export certification services to assure other countries that the plants and plant products they are receiving from the United States are free of plant pests specified by the receiving country.

It should be noted that our regulations do not require that we engage in export certification activities. We perform this work as a service to exporters who are shipping plants or plant products to countries that require phytosanitary certification as a condition of entry.

To request that we perform a phytosanitary inspection, an exporter must complete and submit an Application for Inspection and Certification of Plants and Plant Products for Export (PPQ Form 572).

After assessing the condition of the plants or plant products intended for export (*i.e.,* after conducting a phytosanitary inspection), an inspector (who may be an APHIS employee or a State or county plant regulatory official) will issue an internationally recognized phytosanitary certificate (PPQ Form 577), a phytosanitary certificate for reexport (PPQ Form 579), or an export certificate for processed plant products (PPQ Form 578).

These forms are critical to our ability to certify plants and plant products for export. Without them, we would be unable to conduct an export certification program.

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

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

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

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as

appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2459816 hours per response.

Respondents: U.S. growers, shippers, and exporters, and State and county plant regulatory officials.

Estimated annual number of respondents: 10,991.

Estimated annual number of responses per respondent: 130.43089.

Estimated annual number of responses: 1,433,566.

Estimated total annual burden on respondents: 352,631 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of June 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–14175 Filed 6–7–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of Availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #351, Water Well Decommissioning; #353, Monitoring Well; #355, Well Water Testing; #642, Water Well. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John A. Bricker, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1691; Fax number (804) 287–1737. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS Web site: *http://www.va.nrcs.usda.gov/technical/draftstandards.html.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: May 19, 2011.

John A. Bricker,

State Conservationist, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 2011–14181 Filed 6–7–11; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis (BEA).

Title: Annual Survey of Foreign Direct Investment in the United States.

OMB Control Number: 0608–0034.

Form Number(s): BE–15.

Type of Request: Regular submission.

Number of Respondents: 3,650 annually.

Average Hours per Response: 18.8 hours is the average, but may vary considerably among respondents because of differences in company size and complexity.

Estimated Total Annual Burden Hours: 68,750.

Needs and Uses: The Annual Survey of Foreign Direct Investment in the United States (Form BE–15) obtains sample data on the financial structure and operations of U.S. affiliates of foreign investors. The data are needed to provide reliable, useful, and timely measures of foreign direct investment in the United States, assess its impact on the U.S. economy, and based upon this assessment, make informed policy decisions regarding foreign direct investment in the United States. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign investors, including their balance sheets; income statements; property, plant, and equipment; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. In addition, data covering employment are collected by state. The data are also used to update similar data for the universe of U.S. affiliates collected once every five years on the BE–12 benchmark survey.

No changes in the data collected or in exemption levels are proposed.

The BE–15 annual survey is sent to potential respondents in March of each year. A completed report covering a reporting company's fiscal year ending during the previous calendar year is due by May 31. Reports must be filed by every U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales or gross operating revenues, or net income (or loss) of over $40 million.

As an alternative to filing paper forms, BEA will offer an electronic filing option, its eFile system, for use in reporting on Form BE–15. For more information about eFile, go to *http://www.bea.gov/efile.*

Potential respondents are those U.S. business enterprises that reported in the 2007 benchmark survey of foreign direct investment in the United States, along with businesses that subsequently entered the direct investment universe. The BE–15 is a sample survey, as described; universe estimates are developed from the reported sample data.

Affected Public: Business or other for-profit organizations.

Frequency: Annual.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

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

Written comments and recommendations for the proposed

information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Fax number (202) 395–7245, or via e-mail at *pbugg@omb.eob.gov.*

Dated: June 2, 2011.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2011–14004 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–832]

Pure Magnesium From the People's Republic of China: Preliminary Results of the 2009–2010 Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC"), covering the period May 1, 2009, through April 30, 2010.

We have preliminarily determined that Tianjin Magnesium International Co., Ltd. ("TMI"), the sole respondent in this administrative review, has not made sales in the United States at prices below normal value during the period of review ("POR"). If these preliminary results are adopted in the final results of review, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries of subject merchandise during the period of review ("POR") for which the importer-specific assessment rates are above *de minimis.*

We invite interested parties to comment on these preliminary results. Parties who submit comments are requested to submit with each argument a summary of the argument. We intend to issue the final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act").

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Eve Wang or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–6231 and (202) 482–0414, respectively.

Background

On May 12, 1995, the Department published in the **Federal Register** an antidumping duty order on pure magnesium from the PRC.[1] On May 3, 2010, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on pure magnesium from the PRC for the period May 1, 2009, through April 30, 2010.[2] On May 26, 2010, in accordance with 19 CFR 351.213(b)(2), TMI, a foreign exporter of the subject merchandise, requested the Department to review its sales of subject merchandise. On June 1, 2010, US Magnesium LLC ("Petitioner") also requested that the Department conduct an administrative review of the exports of subject merchandise of TMI. On June 30, 2010, the Department initiated an administrative review of the order on pure magnesium from the PRC for the POR with respect to TMI.[3]

On June 30, 2010, the Department issued an antidumping duty questionnaire to TMI. TMI submitted its section A questionnaire response ("TMI's AQR") on July 30, 2010, sections C and D questionnaire response ("TMI's CQR" and "TMI's DQR") August 27, 2010.[4] Petitioner submitted comments concering TMI's AQR on September 24, 2010, and TMI's CQR and TMI's DQR on November 12, 2010. The Department issued supplemental questionnaires to TMI concerning TMI's AQR, CQR and DQR between January 6, 2011, and May 5, 2011. TMI responded to each of the supplemental questionnaires between February 3, 2011, and May 10, 2011. Petitioner submitted comments on TMI's submissions between April 22, 2011, and May 4, 2011.

On October 12, 2010, Petitioner requested that the Department conduct verification of TMI in accordance with 19 CFR 351.307(b)(1)(iv).

On October 22, 2010, the Department issued a letter to interested parties seeking comments on surrogate country selection and surrogate values ("SVs") to value factors of production ("FOP"). On November 2, 2010, Petitioner filed a request for an extension of time to submit comments on surrogate country selection. On November 15, and November 19, 2010, Petitioner submitted potential surrogate producer financial statements and comments on surrogate country selection, respectively. TMI submitted comments concering surrogate country selection on November 19, 2010, and SV information on December 7, 2010. Petitioner submitted initial SV comments on December 12, 2010, and rebuttal SV comments on December 17, 2010. On December 17, 2010, TMI submitted rebuttal SV comments. On May 3, 2011, Petitioner submitted comments concerning the SV for freight rates.

On January 4, 2011, the Department extended the time period for completion of the preliminary results of this review by 120 days until May 31, 2011.[5]

Period of Review

The POR is May 1, 2009, through April 30, 2010.

Scope of Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).

[1] *See Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation,* 60 FR 25691 (May 12, 1995).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236 (May 3, 2010).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010).

[4] On July 30, 2010, TMI requested an extension of time to file its response to sections C and D of the questionnaire, which the Department granted.

[5] *See Pure Magnesium from the People's Republic of China: Extension of Time for the Preliminary Results of the Antidumping Duty Administrative Review,* 76 FR 1403 (January 10, 2011).

"Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.,* length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Non-Market Economy Country Status

The Department has treated the PRC as a non-market economy ("NME") country in all past antidumping duty investigations and administrative reviews and continues to do so in this case.[6] The Department has previously examined the PRC's market-economy status and determined that NME status should continue for the PRC.[7] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority.[8] No interested party to this proceeding has contested such treatment. Accordingly, we calculated normal value ("NV") using an FOP methodology in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base NV on the NME producer's FOPs. The Act further instructs that valuation of the FOPs shall be based on the best available information from a surrogate market-economy country or countries considered to be appropriate by the Department.[9] When valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are: (1) At a level of economic development comparable to that of the NME country; and (2) significant producers of comparable merchandise.[10] Further, the Department normally values all FOPs in a single surrogate country.[11] The sources of SVs are discussed under the "Normal Value" section below and in the Factor Valuation Memorandum, which is on file in the Central Records Unit, Room 1117 of the main Department building.[12]

In examining which country to select as its primary surrogate country for this proceeding, the Department first determined that India, Indonesia, Peru, the Philippines, Thailand, and Ukraine are countries comparable to the PRC in terms of economic development.[13] The Department has also determined India to be a significant producer of primary aluminum, a product that the Department has found to be comparable to pure magnesium. Both Petitioner and TMI agreed that India is the most appropriate surrogate country for this administrative review. Both Petitioner and TMI submitted Indian-sourced data to value FOPs.

After evaluating interested parties' comments, the Department has determined that India is the appropriate surrogate country to use in this review in accordance with section 773(c)(4) of the Act. The Department based its decision on the following facts: (1) India is at a level of economic development comparable to that of the PRC; (2) India is a significant producer of comparable merchandise, *i.e.,* primary aluminum; and (3) India provides the best opportunity to use quality, publicly available data to value the FOPs. All the data submitted by both Petitioner and TMI for our consideration as potential SVs and surrogate financial ratios are sourced from India. Finally, on the record of this review, we have usable SV data (including financial data) from India, but no such surrogate data from other potential surrogate country.

Therefore, because India best represents the experience of producers of comparable merchandise operating in a surrogate country, we have selected India as the surrogate country and, accordingly, have calculated NV using Indian prices to value TMI's FOPs, when available and appropriate. We have obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of the preliminary results of review.[14]

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, available at *http://ia.ita.doc.gov/policy/bull05-1.pdf.* It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is

[6] *See* 771(18)(C) of the Act; *see, e.g., Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008)("*Pure Magnesium 06–07*"); and *Frontseating Service Valves From the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 74 FR 10886 (March 13, 2009).

[7] *See* Memorandum from the Office of Policy to David M. Spooner, Assistant Secretary for Import Administration, The People's Republic of China (PRC) Status as a Non-Market Economy (NME), dated May 15, 2006. This document is available online at *http://ia.ita.doc.gov/download/prc-nme-status/prc-nme-status-memo.pdf.*

[8] *See* section 771(18)(C)(i) of the Act.

[9] *See* section 773(c)(1) of the Act.

[10] *See* section 773(c)(4) of the Act.

[11] *See* 19 CFR 351.408(c)(2).

[12] *See* Memorandum to the File, "2009–2010 Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China: Factor Valuation Memorandum for the Preliminary Results," dated May 31, 2011 ("Factor Valuation Memorandum").

[13] *See* Memorandum from Carole Showers, Director, Office of Policy, "Request for a List of Surrogate Countries for an Adminstrative Review of the Antidumping Duty Order on Pure Magnesium ("Magnesium") from the People's Republic of China ("PRC")," dated July 20, 2010.

[14] In accordance with 19 CFR 351.301(c)(1), for the final determination of this review, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally cannot accept the submission of additional, previously absent-from-the-record alternative SV information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Rescission, in Part,* 72 FR 58809 (October 17, 2007), and accompanying Issues and Decision Memorandum ("IDM") at Comment 2.

sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. 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) ("*Sparklers*"), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

TMI is the only respondent in this administrative review. TMI reported that it is a wholly Chinese-owned company. Therefore, the Department must analyze whether it can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies.[15]

The evidence provided by TMI supports a preliminary finding of *de jure* absence of government control based on the following: (1) An absence of restrictive stipulations associated with its business and export licenses; (2) applicable legislative enactments decentralizing control of companies; and (3) formal measures by the government decentralizing control of companies.[16]

b. Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[17] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control, which would preclude the Department from assigning separate rates.

The evidence provided by TMI supports a preliminary finding of *de facto* absence of government control based on the following: (1) The absence of evidence that the export prices are set by or are subject to the approval of a government agency; [18] (2) the respondent has authority to negotiate and sign contracts and other agreements; [19] (3) the respondent has autonomy from the government in making decisions regarding the selection of management; [20] and (4) the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[21]

Therefore, the evidence placed on the record of this review by TMI demonstrates an absence of *de jure* and *de facto* government control with respect to TMI's exports of the merchandise under review, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, we have determined that TMI has demonstrated its eligibility for a separate rate.

Fair Value Comparisons

To determine whether sales of pure magnesium to the United States by TMI were made at NV, we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Export Price

In accordance with section 772(a) of the Act, EP is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we have used EP for TMI's U.S. sales because the subject merchandise was sold directly to the unaffiliated customers in the United States prior to importation and because constructed export price was not otherwise warranted.

We have based the EP on delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we have made deductions from the starting price for movement expenses, including expenses for foreign inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, brokerage and handling expenses incurred in the United States, U.S. customs duty, freight from the U.S. port to the customer, rebanding, inventory and warehouse handling expenses. TMI neither reported nor claimed other adjustments to EP.[22]

Normal Value

Section 773(c)(1) of the Act provides that, the Department shall determine NV using an FOP methodology if the merchandise is exported from an NME country and the Department finds that the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. The Department's questionnaire requires that TMI provide information regarding the weighted-average FOPs across all of the company's plants that produce the subject merchandise, not just the FOPs from a single plant. This methodology

[15] See *Sparklers.*

[16] *See* Foreign Trade Law of the People's Republic of China, contained in TMI's AQR, at Exhibit A–2; *see also* Regulations of the People's Republic of China on Administration of Registration of Companies contained in TMI's AQR at Exhibit A–5.

[17] *See Silicon Carbide,* 59 FR at 22587; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[18] *See* TMI's AQR, at 2–3, 6; *see* also the contract and the purchase order between TMI and a U.S. Customer contained in TMI's AQR at Exhibit A–6. *See* also TMI's 1st ASQR Exhibit SA–8.

[19] *See* TMI's AQR at 7; *see* also TMI's 1st SQR at SA–10a.

[20] *See* TMI's AQR at 8.

[21] *See* TMI's AQR at 9–10.

[22] *See* Memorandum to the File "Analysis Memorandum for the Preliminary Results of the 2009–2010 Administrative Review of Pure Magnesium from the People's Republic of China: Tianjin Magnesium International Co., Ltd. ("TMI")" ("TMI's Analysis Memorandum"), dated May 31, 2011.

ensures that the Department's calculations are as accurate as possible.[23]

In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value FOPs, but when a producer sources an input from a market economy and pays for it in market economy ("ME") currency, the Department may value the factor using the actual price paid for the input.[24] TMI reported that it did not purchase inputs from ME suppliers for the production of the subject merchandise.[25]

We calculated NV based on FOPs in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c). The FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. The Department used FOPs reported by TMI for materials, energy, labor, by-products, and packing.

TMI stated that its producer generated three by-products during the production process: magnesium waste, cement clinker, and coal tar.[26] TMI requested by-product offsets to NV for all three products. TMI provided record evidence establishing that all three by-products generated during the course of production have commercial value.[27] Therefore, for these preliminary results, we have granted TMI three by-product offsets to its NV.[28]

Factor Valuations

In accordance with section 773(c) of the Act, the Department calculated NV based on FOPs reported by TMI for the POR. To calculate NV, the Department multiplied the reported per-unit factor consumption quantities by publicly available Indian SVs. In selecting the SVs, the Department considered the quality, specificity, and contemporaneity of the data. The Department adjusted input prices by including freight costs to make them delivered prices, as appropriate. Specifically, the Department added to Indian import SVs a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory of production. This adjustment is in accordance with the decision of the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all SVs used to value TMI's reported FOPs may be found in the Factor Valuation Memorandum.

The Department calculated SVs for the majority of reported FOPs purchased from NME sources using the contemporaneous, weighted-average unit import value derived from the *Monthly Statistics of the Foreign Trade of India,* as published by the Directorate General of Commercial Intelligence and Statistics of the Ministry of Commerce and Industry, Government of India in the Global Trade Atlas ("GTA"), available at *http://www.gtis.com/wta.htm* ("GTA Indian Import Statistics").[29] GTA Indian Import Statistics were reported in India Rupees and are contemporaneous with the POR. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[30]

In those instances where the Department could not obtain publicly available information contemporaneous with the POR with which to value FOPs, the Department adjusted the publicly available SVs using the Indian Wholesale Price Index, as published in the *International Financial Statistics* of the International Monetary Fund.[31]

Furthermore, with regard to Indian import-based SVs, we have disregarded prices that we have reason to believe or suspect may be subsidized, such as those from Indonesia, South Korea, and Thailand. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized.[32] We are also guided by the statute's legislative history that explains that it is not necessary to conduct a formal investigation to ensure that such prices are not subsidized.[33] Rather, the Department was instructed by Congress to base its decision on information that is available to it at the time it is making its determination. In accordance with the foregoing, we have not used prices from these countries in calculating the Indian import-based SVs.

The Department used GTA Indian Import Statistics to calculate SVs for raw materials (*i.e.,* ferrosilicon, fluorite powder, sulphur powder, and sulfuric acid), packing materials (*i.e.,* plastic bags, steel bands, and plastic bands), and by-products (*i.e.,* magnesium waste, cement clinker, and coal tar).

For dolomite, we continue to find, as we did in the previous segments of this proceeding, that it is reasonable to conclude that GTA data represent prices of imported dolomite in the high-end, value-added product range while the dolomite used to produce subject merchandise is more of a high-bulk, low-value commodity.[34] Therefore, as in the 2008–2009 administrative review, we have preliminarily determined to use the audited financial statements of Indian producers submitted on the record of this review for the SV for dolomite.[35] TMI placed the audited financial statements of two companies on the record covering the period April 1, 2009 through March 31, 2010: Bisra Stone Lime Company Ltd. ("Bisra") and Anjani Portland Cement Limited

[23] *See, e.g., Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003), and accompanying Issue and Decision Memorandum at Comment 19.

[24] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components, Div. of Ill. Tool Works, Inc.* v. *United States,* 268 F.3d 1376, 1382–1383 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[25] *See* TMI's DQR at D–16.

[26] *Id.* at D–24 through D–26.

[27] *Id.* at Exhibits D–8 through D–12; *see* also TMI's 2nd SQR at 3 and Exhibit 2S–5.

[28] *See* TMI's Analysis Memorandum at 4.

[29] *See* Factor Valuation Memorandum.

[30] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[31] See Factor Valuation Memorandum.

[32] *See Final Results Of Redetermination Pursuant To Court Remand, dated February 25, 2010, Jinan Yipin Corp., Ltd.* v. *United States,* 637 F. Supp. 2d 1183 (CIT 2009). *See also Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review,* 70 FR 54007, 54011 (September 13, 2005), unchanged in *Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Final Results of the First Administrative Review,* 71 FR 14170 (March 21, 2006); and *China Nat'l Mach. Import & Export Corp.* v. *United States,* 293 F. Supp. 2d 1334 (CIT 2003), *affirmed* 104 Fed. Appx. 183 (Fed. Cir. 2004).

[33] *See* H.R. Rep. No. 100–576 at 590 (1988).

[34] *See Pure Magnesium 06–07,* and accompanying IDM at Comment 1. In addition, see TMI's SV Comments at Exhibits SV–2C and SV–2D, which respectively contain, *British Geological Survey (2006): Dolomite and A Review of the Dolomite and Limestone Industry in South Africa Report R43/2003.*

[35] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010).

("Anjani").[36] Petitioner placed on the record the audited financial statements for two Indian metal companies covering the same period: Tata Sponge Iron Ltd ("Tata") and Bhushan Steel Limited ("Bhushan"). In examining these financial statements, we have determined that the prices reflected in the financial statements of the four companies represent the best available information on the record with which to value dolomite. All of these financial statements are fully legible and generally contemporaneous with the POR. The companies were profitable and did not receive subsidies that the Department has found to be countervailable and would otherwise taint the prices of materials that it sold or consumed. Therefore, we have preliminary determined the SV of dolomite based on the simple average of domestic prices for dolomite provided in the audited financial statements of these four companies.

We valued flux No.2, which consists of magnesium chloride, potassium chloride, and sodium chloride, using data from *Chemical Weekly.* We consider both *Chemical Weekly* and GTA Indian Import Statistics to be reliable sources and, as such, the Department has used them in past cases to value chemical component inputs. In the instant case, however, we have determined, as we have been in the three immediately preceding segments of this proceeding, that *Chemical Weekly* is the best available information for valuing flux because the data are publicly available prices, are contemporaneous with the POR, are specific to TMI's input, and are representative of prices in India.[37]

As a consequence of the decision of the CAFC in *Dorbest Ltd.* v. *United States,* 604 F. 3d 1363 (Fed. Cir. 2010), the Department no longer relies on the regression-based wage rate described in 19 CFR 351.408(c)(3). The Department is continuing to evaluate options for determining labor values in light of the recent CAFC decision. For these preliminary results, we have calculated an hourly wage rate to use in valuing the reported labor input by averaging earnings and/or wages in countries that are economically-comparable to the PRC and that are significant producers of comparable merchandise. To calculate the hourly wage data, we used wage rate data reported by the International Labor Organization ("ILO").[38] Because an industry-specific dataset relevant to this proceeding exists within the Department's preferred ILO source, we used industry-specific data to calculate a surrogate wage rate for this review, in accordance with section 773(c)(1) of the Act.

For this review, the Department has calculated the wage rate using a simple average of the data provided to the ILO under Sub-Classification 27 ("Manufacture of basic metal") of the ISIC–Revision 3 by countries determined to be both economically-comparable and significant producers to the PRC. The Department finds the two-digit description under Sub-Classification 27 is the best available wage rate surrogate value on the record because it is specific to, and derived from, industries that produce merchandise comparable to the subject merchandise. Consequently, we average the ILO industry-specific wage rate data or earnings data vailable from the following countries found to be economically comparable to the PRC and to be significant producers of comparable merchandise: Egypt, Indonesia, Philippines, Ukraine, Jordan, Thailand, Ecuador, and Peru.[39] On this basis, the Department calculated a simple average, industry specific wage rate of $1.96 for these preliminary results.[40]

We valued electricity using the updated electricity price data for small, medium, and large industries, as published by the Central Electricity Authority, an administrative body of the Government of India, in its publication titled *Electricity Tariff & Duty and Average Rates of Electricity Supply in India,* dated March 2008.[41] These electricity rates represent actual country-wide, publicly-available information on tax-exclusive electricity rates charged to small, medium, and large industries in India. We did not inflate this value because utility rates represent current rates, as indicated by the effective dates listed for each of the rates provided.

To value steam coal, we used steam coal prices from the December 12, 2007, *CIL's Coal Pricing Circular. See* CIL: S&M: GM(F): Pricing 1124, dated 12 December 2007.[42] Since TMI reports using non-coking coal with a useful heat value of 5500 kcal/kg,[43] we calculated the SV for steam coal by averaging the prices of long-flame grade C non-coking coal and non-long-flame grade C non-coking steam coal, both of which have UHV exceeding 4940 kcal/kg, but not exceeding 5600 kcal/kg, from the December 12, 2007, *CIL's Coal Pricing Circular.*[44] We did not inflate this value to the current POR because the steam coal rates represent the rates that were in effect until October 16, 2009,[45] and are, therefore, contemporaneous with the POR. Finally, we have applied an additional fixed surcharge of 165 rupees ("Rs.")/metric ton to our calculation of the average of the prices of long-flame grade C non-coking coal and non-long-flame grade C non-coking coal from CIL.[46]

We valued truck freight expenses using an Indian per-unit average rate calculated from data on the following *Web site: http://www.infobanc.com/logistics/logtruck.htm*[47] The logistics section of this Web site contains inland freight truck rates between many large Indian cities. We did not inflate this rate since it is contemporaneous with the POR.

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in India. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in India that is published in *Doing Business 2010: India,* published by the World Bank.[48]

We valued marine insurance using a price quote retrieved from RJG Consultants, online at *http://www.rjgconsultants.com/163.html,* an

[36] *See* TMI's SV Comments at Exhibits SV–2F and SV–2G.

[37] *See* Factor Valuation Memorandum at 6–7

[38] The ILO industry-specific data is reported according to the International Standard Industrial Classification of all Economic Activities ("ISIC") code, which is maintained by the United Nations Statistical Division and is periodically updated. These updates are referred to as "Revisions." The ILO, an organization under the auspices of the United Nation, utilizes this classification for reporting purposes. Currently, wage and earnings data are available from the ILO under the following revisions: ISIC–Rev.2, ISIC–Rev.3, and most recently, ISIC–Rev.4. The ISIC code establishes a two-digit breakout for each manufacturing category, and also often provides a three- or four-digit sub-category for each two-digit category. Depending on the country, data may be reported at either the two-, three- or four-digit subcategory.

[39] Although India is used as the primary surrogate country for the other FOPs, India is not included in the list of countries used to calculate the industry-specific wage rate because there were no earnings or wage data available from the ILO for the applicable period.

[40] *See* the Factor Value Memorandum at 9 and Exhibit 10.

[41] *See* Factor Valuation Memorandum at 6.

[42] *See* Factor Valuation Memorandum at 6.

[43] *See* TMI's DQR at D–12. See also Annexure X of *CIL's Coal Pricing Circular* in the Factor Valuation Memorandum (identifying the range of kcal/kg in each grade of coal).

[44] *See* Factor Valuation Memorandum.

[45] *See* TMI's December 7, 2010 SV submission, Exhibit SV–6.

[46] See *http://www.coalindia.nic.in/pricing.htm,* General Remarks Note 2 ("Additional Rs. 165 shall be charged on pithead price of Run of Mine Coal for the supply of steam coal.").

[47] *See* Factor Valuation Memorandum at 10.

[48] *Id.*

ME provider of marine insurance.[49] We did not inflate this rate since it is contemporaneous with the POR

According to 19 CFR 351.408(c)(4), the Department is directed to value overhead, general, and administrative expenses ("SG&A"), and profit using non-proprietary information gathered from producers of identical or comparable merchandise in the surrogate country. In this administrative review, Petitioner and TMI, collectively, placed on the record financial statements for ten Indian metal producers. Specifically, Petitioner submitted the 2009–2010 financial statements for two producers of primary aluminum—National Aluminium Company Limited ("NALCO") and Bharat Aluminum Co., Ltd; one producer of zinc products—Hindustan Zinc Limited ("Hindustan Zinc"); and a producer of copper—Hindustan Copper Limited.[50] In addition, Petitioner included the 2008–2009 financial statements for one Indian producer of alloy steel, titanium, and molybdenum—Midhani Dhatu Nigam Limited for the Department's consideration ("Midhani").[51] TMI submitted the 2009–2010 financial statements for one producer of primary aluminum—Hindalco Industries Limited ("HINDALCO"), and four producers of aluminum products—Sudal Industries Ltd. ("Sudal"), Century Extrusions Ltd. ("Century"), Bhoruka Aluminum ("Bhoruka") and Gujurat Foils Limited.[52]

For the following reasons, we have determined not to rely on the 2009–2010 audited financial statements of Sudal, Century, Bhoruka, Gujarat, HINDALCO, NALCO, Hindustan Zinc, and Hindustan Copper, and the 2008–2009 audited financial statements of Midhani, as surrogate financial statements under 19 CRF 351.408(c)(4). The Department, as in the three immediately preceding segments of this proceeding,[53] continues to prefer selecting financial statements from a producer of primary aluminum, which the Department has determined to be comparable to pure magnesium for purposes of selecting financial statements.[54] Accordingly, we decline to rely on audited financial statements for Sudal, Century, Bhoruka, and Gujurat because these are not producers of preliminary aluminum; rather, they produced downstream products of aluminum (*e.g.,* aluminum extruders and foils).

Second, the Department declines to use financial statements for Hindustan Zinc and NALCO because the Department has a well-established practice of disregarding financial statements where there is evidence that the company received subsidies that the Department has previously found to be countervailable, and where there are other sufficient reliable and representative data on the record for purposes of calculating the surrogate financial ratios.[55] Hindustan Zinc received benefits from the Export Promotion Capital Goods Scheme ("EPCG"),[56] a subsidy that the Department has determined to be countervailable.[57] Similarly, NALCO received, during the POR, EPCG subsidy notwithstanding it produced primary aluminum.[58] Third, we find that the financial statements for HINDALCO are not the best information available for purposes of selecting financial statements because only one tenth of HINDALCO's production was related to primary aluminum during the POR.[59] In contrast, more than half of its production was related to copper, a product that the Department has determined not to be comparable to pure magnesium.[60] Likewise, the Department rejects the use of financial statements for Hindustan Copper because it produced copper. Fourth, the Department rejects the use of financial statements for Midhani because the Department has not determined that any of the three principal products made by the company, alloy steel, titanium, and molybdenum, are comparable to pure magnesium. Because the Department has available to it a financial statement from a primary aluminum producer and the period covered in Midhani's financial statements is not the most contemporaneous to the POR, we do not need to make a finding regarding the comparability of Midhani's merchandise to pure magnesium.

Finally, the Department finds that the financial statements for Bharat are the best information available for purposes of selecting financial statements. Bharat produced primary aluminum, which the Department has determined to be comparable to pure magnesium. There is no evidence in the financial statements that Bharat received any benefits that the Department has determined to be countervailable. Bharat was profitable during the POR. Further, its audited financial statements are complete and are sufficiently detailed to disaggregate materials, labor, overhead, and SG&A expenses. As a result, we have preliminarily determined to use the 2009–2010 audited financial statements of Bharat as the basis of the financial ratios in this review.

For a complete listing of all the inputs and a detailed discussion about our SV selections, *see* the Factor Valuation Memorandum.

Currency Conversion

Where necessary, the Department made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect as certified by the Federal Reserve Bank on the date of the U.S. sale.

[49] *Id.*

[50] In its May 4, 2011 submission of Petitioner's Comments Concerning The Preliminary Results, Petitioner argued that financial statements for Madras Aluminum Company ("MALCO") 2006/2007is the second best information for purposes of selecting financial statements, notwithstanding the financial statements are not on the record. The Department disagrees with Petitioner and rejects the use of financial statements because they are not contemporaneous. Herein, the financial statements for MALCO 2006/2007 are now officially on the record for this review.

[51] *See* Petitioner's SV Submission at Exhibits 5 and 6.

[52] *See* TMI's SV Submission at Exhibits SV–13A through SV–13E.

[53] *See Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 73 FR 76336 (December 16, 2008) and accompanying IDM ("2006–2007 Pure Magnesium Review") (MALCO's financial statements were used); *Pure Magnesium from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 66089 (December 14, 2009) and accompanying IDM ("2007–2008 Pure Magnesium Review") (MALCO's financial statements were used); *Pure Magnesium from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010) and accompanying IDM ("2008–2009 Pure Magnesium Review") (MALCO's financial statements were used).

[54] *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Pure Magnesium and Alloy Magnesium from the People's Republic of China,* 59 FR 55424 (November 7, 1994).

[55] *See Certain Steel Nails from the People's Republic of China: Final Results of the First New Shipper Review,* 75 FR 34424 (June 17, 2010) and accompanying IDM at Comment 4; *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances,* 73 FR 40485 (July 15, 2008) and accompanying IDM at Comment 17.A.

[56] Petitioner's Initial Comments on Vaulation of Factor of Production, dated Dec. 7, 2010, Exhibit 10, at 86.

[57] *See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results of Countervailing Duty Administrative Review,* 75 FR 43488 (July 26, 2010) and accompanying IDM at Comment 2.

[58] *See* Petitioner's Initial Comments on Vaulation of Factor of Production, dated Dec. 7, 2010, Exhibit 8, at 70.

[59] *See* TMI's Surrogate Vaule Information, dated Dec. 7, 2011, Exhibit SV–13E, at 82.

[60] *See Pure Magnesium From the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review of the Antidumping Duty Order,* 75 FR 80791 (December 23, 2010), and accompanying IDM at Comment 2.

Duty Absorption

Section 751(a)(4) of the Act provides for the Department, if requested, to determine during an administrative review initiated two or four years after publication of the order, whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. *See also,* 19 CFR 351.213(j). On July 10, 2010, Petitioner requested that the Department determine whether TMI had absorbed antidumping duties for U.S. sales of pure magnesium made during the POR. Since the instant review was initiated more than five years after publication of the pure magnesium order, this request is untimely and, as such, we have not conducted a duty absorption analysis.

Weighted-Average Dumping Margin

The preliminary weighted-average dumping margin is as follows:

PURE MAGNESIUM FROM THE PRC

Exporter	Weighted-average margin (percentage)
Tianjin Magnesium International Co. Ltd	0

Disclosure

The Department will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of these preliminary results.[61] If a hearing is requested, the Department will announce the hearing schedule at a later date. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of the preliminary results of review.[62] Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than five days after the time limit for filing the case briefs.[63] Further, we request that parties submitting written comments provide the Department with an additional electronic copy of those comments on a CD–ROM. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in all comments, and at a hearing, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.[64] For assessment purposes, we calculated importer- or customer-specific assessment rates for merchandise subject to this review. We calculated an *ad valorem* rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total entered value associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer or customer by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- or customer-specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent) in accordance with the requirement of 19 CFR 351.106(c)(2), the Department will instruct CBP to assess that importer's or customer's entries of subject merchandise without regard to antidumping duties. We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by sections 751(a)(2)(C) of the Act: (1) For TMI, which has a separate rate, the cash deposit rate will be that established in the final results of this review (except, if the rate is zero or *de minimis,* zero cash deposit will be required); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 111.73 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

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[61] *See* 19 CFR 351.310(c).

[62] *See* 19 CFR 351.309(c)(ii).

[63] *See* 19 CFR 351.309(d).

[64] *See* 19 CFR 351.212(b).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–815]

Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request from Noksel Celik Boru Sanayi A.S., (Noksel), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on light-walled rectangular pipe and tube from Turkey. Atlas Tube, Inc. and Searing Industries, Inc. are petitioners in this case. The review covers exports of the subject

merchandise to the United States produced and exported by Noksel. The period of review (POR) is May 1, 2009, through April 30, 2010.

We preliminarily find that Noksel did not make sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess appropriate antidumping duties on any entries made by Noksel during the POR and to set the cash deposit rate for Noksel to zero.

DATES: Effective Date: June 8, 2011

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on light-walled rectangular ripe and tube from Turkey on May 30, 2008. *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube from Turkey,* 73 FR 31065 (May 30, 2008). On May 3, 2010, the Department published the notice of opportunity to request an administrative review of light-walled rectangular pipe and tube from Turkey for the period January 30, 2009, through April 30, 2010. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236 (May 3, 2010)

On May 28, 2010, Noksel requested an administrative review for this period. On June 30, 2010, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). On July 15, 2010, the Department issued its antidumping questionnaire to Noksel.

As discussed in detail, below, on August 9, 2010, Noksel submitted a letter requesting that the reporting period be modified to cover only the period of October 1, 2009, through April 30, 2010, and that it be excused from reporting certain home market sales of "second quality" merchandise for which Noksel claimed it lacked sufficient records to allow it to respond fully to the Department's questionnaire or to identify foreign like product. On August 13, 2010, the Department sent Noksel a supplemental questionnaire requesting additional information about Noksel's request for limited reporting of home market sales. On August 16, 2010, the Department sent Noksel a letter accepting Noksel's limited reporting of home market sales to the period October 1, 2009, to April 30, 2010, and tentatively excusing Noksel from reporting the sales of certain "second quality" merchandise for which Noksel claimed it lacked sufficient records. Noksel submitted its response to the Department's supplemental questionnaire regarding limited reporting on August 20, 2010 (Noksel's August 20, 2010 Response).

Noksel submitted its response to section A of the Department's antidumping questionnaire on August 16, 2010 (Noksel's Section A Response). Noksel submitted its response to sections B and C of the antidumping questionnaire on September 7, 2010 (Noksel's Sections B and C Response).

On November 12, 2010, the Department issued a supplemental questionnaire to Noksel regarding Noksel's Section A Response and Noksel's Sections B and C Response and Nokel's Limited Reporting Questionnaire Response. Noksel submitted its response to the Department's supplemental questionnaire on December 20, 2010 (Noksel's December 20, 2010 Response).

On March 4, 2011, the Department issued a second supplemental questionnaire to Noksel regarding its prior questionnaire responses. Noksel submitted its response to the Department's second supplemental questionnaire on March 23, 2011 (Noksel's March 23, 2011 Response).

Scope of the Order

The merchandise subject to this order is certain welded carbon quality light-walled steel pipe and tube, of rectangular (including square) cross section, having a wall thickness of less than 4 mm. The term carbon-quality steel includes both carbon steel and alloy steel which contains only small amounts of alloying elements. Specifically, the term carbon-quality includes products in which none of the elements listed below exceeds the quantity by weight respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent vanadium, or 0.15 percent of zirconium. The description of carbon-quality is intended to identify carbon-quality products within the scope. The welded carbon-quality rectangular pipe and tube subject to this order is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7306.61.50.00 and 7306.61.70.60. While HTSUS subheadings are provided for convenience and CBP's customs purposes, our written description of the scope of the order is dispositive.

Limited Home Market Reporting

As explained above, Noksel requested that the reporting period for home market sales be limited to the period October 1, 2009, to April 30, 2010. Noksel reported U.S. sales which were invoiced in only one calendar month of the POR. Noksel reported that it had no other U.S. sales during the POR. *See, e.g.,* Noksel's August 9, 2010, letter. Noksel also requested that the Department excuse it from reporting home-market sales of certain "second quality" merchandise for which Noksel claimed it lacked sufficient records. *See* Noksel's August 9, 2010, letter.

Regarding Noksel's request that we limit the home market reporting period, our past practice in other cases in which respondents made sales of subject merchandise in only a portion of the POR has been to allow respondents to limit their home market sales reporting period to those home market sales which are contemporaneous with their U.S. sales. *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products From India: Preliminary Results of Antidumping Duty Administrative Review,* 71 FR 2018 (January 12, 2006) (unchanged in *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review,* 71 FR 40694); *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406 (April 6, 2005) (unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil,* 70 FR 58683); and *Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 61127 (October 4, 2010). For this reason, we have permitted Noksel to limit its reporting of home market sales to those months which are contemporaneous with its U.S. sales. In our margin calculations, U.S. sales made in January 2010 could potentially be compared to the prices of home market

sales at any time between October 2009 and March 2010; U.S. sales made in February 2010 could potentially be compared to the prices of home market sales made between November 2009 and April 2010. U.S. sales made in January 2010 or February 2010 could not match to home market sales made in any months outside of these periods. Therefore, to ensure that we would have the necessary home market sales, regardless of our choice of date of sale, we allowed Noksel to limit its reporting of home market sales to those sales made during the period October 2009 through April 2010.

Our analysis indicated, based on record evidence, that the appropriate date of sale of Noksel's U.S. sales might properly be a date in February 2010. *See, e.g.,* Exhibit C–2 of Noksel's Section B and C response, at page 2 and Exhibit SB–8 of Noksel's December 20, 2010 Response at page 4. Therefore, to allow the Department to use the date of sale methodology deemed most appropriate, and to ensure completeness, we asked Noksel to report home market sales made in May 2010 as well. *See* the Department's March 4, 2011, supplemental questionnaire and Noksel's March 23, 2011 Response. Accordingly, for these preliminary results, we have limited the reporting period for home market sales to the period of October 1, 2009, through May 31, 2010.

As noted, Noksel also reported that it had made sales of certain "second quality" merchandise for which Noksel claimed it lacked complete sales records. *See* Noksel's August 9, 2010, letter. Noksel further explained that it could not differentiate the sales of these products according to product type. We excused Noksel from reporting these sales in its sales home market database, but we also subsequently asked Noksel to report whatever information if maintained about these sales. *See* the Department's March 4, 2011, supplemental questionnaire. Noksel complied. *See* Noksel's March 23, 2011 Response. Based on the information on the record, we preliminarily determine that these are sales of "second quality" merchandise that would not be suitable for matching to the prime quality pipe Noksel sold in the United States.

Fair Value Comparisons

To determine whether sales of light-walled rectangular pipe and tube from Turkey in the United States were made at less than NV, we compared U.S. price to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Tariff Act of 1930, as amended (the Act), we calculated monthly weighted-average NVs and compared these to individual U.S. transactions. Because we determined Noksel made only EP sales during the POR, we used EP as the basis for U.S. price in all of our comparisons.

In accordance with 19 CFR 351.410(i), the Department "normally" will use invoice date as the date of sale unless "a different date better reflects the date on which the exporter or producer establishes the material terms of sale." Based on evidence on the record, we preliminarily determine that the material terms of sale for U.S. sales were established at the time of the issuance of the purchase order/contract. Noksel explained that quantity can vary between the purchase order date and the invoice date. Noksel reports that a quantity tolerance is permitted from the quantity stated on the purchase order, and that quantity can vary after the date of the purchase order, up until production is completed. *See* Noksel's Section A Response at page A–18 and page 1 of Exhibit A–8; Noksel's Sections B and C Response at pages C–12, and Noksel's December 20, 2010 Response at pages S–62 to S–64 and Noksel's March 23, 2011 Response at pages 14 to 15. However, in the case of Noksel's U.S. sale, neither quantity nor unit price varied between purchase order and invoice. *See* Noksel's Section A Response at Exhibit A–8.

Based on record evidence, we also determine that the material terms of sale for home market sales were established at the time the purchase order. Therefore, we used the purchase order date, as recorded in Noksel's normal books and records, as the date of sale for Noksel's U.S. and home market sales. *See* Memorandum from Tyler Weinhold to the File, "Analysis of Data Submitted by Noksel Celik Boru Sanayi A.S., (Noksel) in the Preliminary Results of the 2009–2010 Administrative Review of Light-Walled Rectangular Pipe and Tube from Turkey," dated May 31, 2011 (Preliminary Analysis Memorandum).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by Noksel covered by the description in the "Scope of the Order" section, above, and sold in the home market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. As mentioned above, we limited the reporting period for home market sales to the period of October 1, 2009, through May 31, 2010. We relied on six characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): (1) Steel input type; (2) metallic coating; (3) painted/non-painted; (4) perimeter; (5) wall thickness; and (6) shape. *See* the antidumping questionnaire at Appendix 5. In our normal practice where there are no contemporaneous sales of identical merchandise in the home market to compare to U.S. sales, we compare U.S. sales to contemporaneous sales of the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. *See* Preliminary Analysis memorandum at page 2. For these preliminary results, we compared U.S. sales to identical foreign like products. In our normal practice, where there are no sales of identical or similar merchandise in the home market suitable for comparison to U.S. sales, we compare U.S. sales to constructed value (CV). For these preliminary results, because there were sales of identical merchandise in the home market suitable for comparison to each U.S. sale, we compared no U.S. sales to CV in these preliminary results.

Export Price

Section 772(a) of the Act defines Export Price (EP) as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States," as adjusted under section 772(c). In accordance with section 772(a) of the Act, we used EP for all of Noksel's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and were made directly to unaffiliated U.S. customers, and because our CEP methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for duty drawback. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, and exporter's association fee. *See* Preliminary Analysis memorandum at page 7. Additionally, we made adjustments for direct selling expenses (credit expenses, banking charges) in accordance with section 772(c)(2)(A) of the Act. *Id.*

Noksel originally stated that it reported its U.S. sales and per-unit adjustments according to Turkish Customs weigh station weights, as recorded on the Turkish customs exit declaration. However, Noksel later clarified that it had mistakenly misrepresented the quantity reported in its U.S. sales databases as coming from Turkish Customs weigh station weights, when in fact it was taken from the weights from Noksel's normal books and records, recorded during packing of the subject merchandise. *See* Noksel's March 23, 2011 Response at page 14 and Noksel's December 20, 2010 Response at page S–94. Noksel explained that it weighed individual bundles of foreign like product and subject merchandise during packing, and was able to tie the recorded weights of individual bundles of pipe to specific home market and U.S. sales invoices. *See* Noksel's December 20, 2010 Response at pages S–88 to S–98, and S–113. We relied upon this information for these preliminary results.

Noksel reported that it collected rebates of import duties for purchases of raw materials, based on its exports of merchandise (duty drawback), under the Turkish Inward Processing Regime (IPR). Noksel reported that these rebates were dependent upon its exports of subject merchandise. *See* Noksel's Sections B and C Response at pages C–31 to C–32. Noksel also demonstrated the quantity of imports of materials for which Noksel received rebates of import duties were sufficient to cover the quantity of exports made under the IPR. *See* Noksel's December 20, 2010 Response at pages S–117 to S–119, and Noksel's March 23, 2011 Response at pages 16 to 23. Therefore in accordance with section 772(c)(1)(B) of the Act, we made an upward adjustment to U.S. price for duty drawback. *See, e.g., Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Antidumping Duty Administrative Review,* 75 FR 64250 (October 19, 2010). *See also* Preliminary Analysis Memorandum at page 6.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.,* the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Noksel's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1) of the Act. Because Noksel's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.,* DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses. *See* PreliminaryAnalysis Memorandum at page 3. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived.

To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar. *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

Noksel reported that it sold light-walled rectangular pipe and tube at only one level of trade and in only one channel of distribution in the home market and at one level of trade and in one channel of distribution in the U.S. market. *See* Noksel's Section A Response at ExhibitA–7 and Noksel's Section B Response at pages B–12 to B–13 and B–24.

Based on our analysis of the record evidence provided by Noksel, we preliminarily determine that a single LOT exists in the home market. We obtained information from Noksel regarding the marketing stages involved in making its reported home market and U.S. sales. Noksel described all selling activities performed, and provided a table comparing the selling functions performed in both markets. *See* Noksel's Section A response at Exhibit A–7. We find Noksel performed virtually the same level of customer support services on its EP sales as it did on its home market sales and that the minor differences that do exist do not establish distinct and separate levels of trade. The record evidence supports a finding that in both markets, Noksel performs essentially the same level of services. While we found minor differences between the home and U.S. markets, based on our analysis of the selling functions performed on EP sales in the United States, and its sales in the home market, we determine that the EP and the starting price of home market sales represent the same stage in the marketing process, and are thus at the same LOT. For this reason, we preliminarily find that a LOT adjustment is not appropriate for Noksel.

Currency Conversions

In accordance with section 773A(a) of the Act, we made Turkish lira-U.S. dollar currency conversions, where appropriate, based on the exchange rates in effect on the dates of the U.S. sales, as collected by Dow Jones Reuters Business Interactive LLC (marketed as Factiva) and as published on the Import Administration's Web site (*http://ia.ita.doc.gov/exchange/index.html*).

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period May 1, 2009, through April 30, 2010:

Manufacturer/exporter	Weighted average margin (percentage)
Noksel	0.00%

Disclosure and Public Hearing

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with section 351.224(b) of the Department's regulations. An interested party may request a hearing within thirty days of publication. *See* section 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date pursuant to section 351.310(d) of the Department's regulations. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

Comments

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c). Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 35 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. Noksel has reported entered values for all of its sales of subject merchandise to the United States during the POR. Therefore, in accordance with section 351.212(b)(1) of the Department's regulations, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales of that importer. These rates will be assessed uniformly on all entries the respective importers made during the POR. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP fifteen days after publication of the final results of 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). This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company involved in the transaction. *Id.*

Cash Deposit Requirements

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of light-walled rectangular pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Noksel will be the rate established in the final results of review; (2) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the all-others rate of 27.04 percent *ad valorem* from the LTFV investigation. *See Notice of Antidumping Duty Order: Light-Walled Rectangular Pipe and Tube From Turkey,* 73 FR 31065 (May 30, 2008). These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double the antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14172 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request by interested parties, the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube ("welded pipe and tube") from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010) ("*Review Initiation*").[1] This review covers the Borusan Group [2] (collectively

[1] Tubeco Pipe and Steel Corporation was mistakenly listed as a company for which the Department received a request for review.

[2] The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Holding A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan

"Borusan") and Toscelik.[3] We preliminarily determine that Borusan and Toscelik made sales below normal value ("NV"). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties based on the difference between the export price ("EP") and the NV. The preliminary results are listed below in the section titled "Preliminary Results of Review."

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Victoria Cho, at (202) 482–5973 or (202) 482–5075, respectively; AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1986, the Department published in the **Federal Register** the antidumping duty order on welded pipe and tube from Turkey. *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey,* 51 FR 17784 (May 15, 1986) ("*Antidumping Duty Order*"). On May 3, 2010, the Department published a notice of opportunity to request an administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 75 FR 23236 (May 3, 2010). On May 28, 2010, in accordance with 19 CFR 351.213(b)(2), Borusan and Toscelik requested reviews. On June 1, 2010, in accordance with 19 CFR 351.213(b)(1), domestic interested party U.S. Steel requested reviews of Borusan and Toscelik.

On June 30, 2010, the Department published a notice of initiation of administrative review of the antidumping duty order on welded pipe and tube from Turkey, covering the period of review ("POR") of May 1, 2009, through April 30, 2010. *See Review Initiation.*

On July 13, 2010, the Department sent antidumping duty administrative review questionnaires to Borusan and Toscelik.[4] We received Borusan's and Toscelik's Sections A–D questionnaire response in September 2010. We issued supplemental section A, B, C, and D questionnaires, to which Borusan and Toscelik responded during November and December, 2010, and February 2011.

On January 19, 2011, the Department extended the time period for issuing the preliminary results of the administrative review from January 31, 2011, to May 31, 2011. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 3083 (January 19, 2011).

Period of Review

The POR covered by this review is May 1, 2009, through April 30, 2010.

Scope of the Order

The products covered by this order include circular welded non-alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Product Comparisons

We compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice. In accordance with section 771(16) of the Tariff Act of 1930, as amended ("the Act"), we first attempted to match contemporaneous sales of products sold in the United States and comparison market that were identical with respect to the following characteristics: (1) Grade; (2) nominal pipe size; (3) wall thickness; (4) surface finish; and (5) end finish. When there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar merchandise based on the characteristics listed above in order of priority listed.

Export Price

Because Borusan and Toscelik sold subject merchandise directly to the first unaffiliated purchaser in the United States prior to importation, and constructed export price ("CEP") methodology was not otherwise warranted based on the record facts of this review, in accordance with section 772(a) of the Act, we used EP as the basis for all of Borusan and Toscellik's sales.

We calculated EP using, as the starting price, the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we made the following deductions from the starting price (gross unit price), where appropriate: foreign inland freight from the mill to port, foreign brokerage and handling, and international freight.

In addition, Borusan reported an amount for duty drawback which represents the amount of duties on imported raw materials associated with a particular shipment of subject merchandise to the United States that is exempted upon export. Borusan requested that we add the amount to the starting price. *See* page C–35 of Borusan's September 3, 2010, original response. To determine if a duty drawback adjustment is warranted, the Department has employed a two-prong test which determines whether: (1) The rebate and import duties are dependent upon one another, or in the context of an exemption from import duties, if the exemption is linked to the exportation of the subject merchandise; and (2) the respondent has demonstrated that there

Ihracat Ithalat ve Dagitim A.S., and Borusan Ithicat ve Dagitim A.S.

[3] Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and Tosyali Dis Ticaret A.S. (collectively "Toscelik").

[4] The questionnaire consists of sections A (general information), B (sales in the home market or to third countries), C (sales to the United States), D (cost of production/constructed value), and E (cost of further manufacturing or assembly performed in the United States).

are sufficient imports of the raw material to account for the duty drawback on the exports of the subject merchandise. *See Allied Tube & Conduit Corp.* v. *United States,* 29 C.I.T. 502, 506 (Ct. Int'l Trade 2005). *See also Certain Steel Concrete Reinforcing Bars From Turkey; Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review and Notice of Intent to Revoke in Part,* 72 FR 25253, 25256 (May 4, 2007), unchanged in *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part,* 72 FR 62630 (November 6, 2007).

After analyzing the facts on the record of this case, we find that Borusan has adequately demonstrated that import duties for raw materials and rebates granted on exports are linked under the Government of Turkey's duty drawback scheme. *See* Borusan's September 3, 2010, Section C response at 35–38. Additionally, Borusan has provided evidence that its imports of hot-rolled coil are sufficient to account for the duty drawback claimed on the export of subject merchandise. *See id.* Therefore, consistent with our determination in the 2007–2008 administrative review, we are granting Borusan a duty drawback adjustment for purposes of the preliminary results. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review,* 74 FR 6368 (February 9, 2009), unchanged in *Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Final Results of Antidumping Duty Administrative Review,* 74 FR 22883 (May 15, 2009) ("*2007–08 Administrative Review*").

Normal Value

A. Selection of Comparison Market

To determine whether there was a sufficient volume of sales in the comparison market, *i.e.,* Turkey, to serve as a viable basis for calculating NV, we compared Borusan's and Toscelik's home market sales volumes of the foreign like product to their U.S. sales volume of the subject merchandise, in accordance with section 773(a)(1) of the Act. For each company, the aggregate home market sales volume of the foreign like product was greater than five percent of the U.S. sales volume of the subject merchandise. Therefore, we determine that the home market was viable for comparison purposes for Borusan and Toscelik.

B. Affiliated Party Transactions and Arm's Length Test

We included in our analysis Borusan's and Toscelik's home market sales to affiliated customers only where we determined that such sales were made at arm's-length prices, *i.e.,* at prices comparable to prices at which Borusan and Toscelik sold identical merchandise to their unaffiliated customers. Borusan's and Toscelik's sales to affiliates constituted less than five percent of overall home market sales. To test whether the sales to affiliates were made at arm's-length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the prices to that affiliated party were, on average, within a range of 98 to 102 percent of the prices of comparable merchandise sold to unaffiliated parties, we determined that the sales made to the affiliated party were at arm's-length. *See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative: Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy,* 71 FR 45017, 45020 (August 8, 2006) (unchanged in *Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta From Italy,* 72 FR 7011 (February 14, 2007)); 19 CFR 351.403(c). *See also* Memorandum from Dennis McClure to The File, "Analysis Memorandum for Toscelik Profil ve Sac Endustrisi A.S." ("Toscelik Sales Calculation Memo") and Memorandum from Victoria Cho to The File, "Analysis Memorandum for the Borusan Group" ("Borusan Sales Calculation Memo") dated May 31, 2011. Conversely, where we found that the sales to an affiliated party did not pass the arm's-length test, then all sales to that affiliated party have been excluded from the NV calculation. *See id. See also Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69187 (November 15, 2002).

C. Level of Trade

As set forth in section 773(a)(1)(B)(i) of the Act and in the Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, at 829–831 (*see* H.R. Doc. No. 316, 103d Cong., 2d Sess. 829–831 (1994)), to the extent practicable, the Department calculates NV based on sales at the same level of trade ("LOT") as U.S. sales, either EP or CEP. When the Department is unable to find sale(s) in the comparison market at the same LOT as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different LOTs. The NV LOT is that of the starting price sales in the home market. To determine whether home market sales are at a different LOT than U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Honey From Argentina: Preliminary Results of Antidumping Duty Administrative Review and Intent to Revoke Order in Part,* 73 FR 79802, 79805 (December 30, 2008) ("*Honey from Argentina*"). If the comparison market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. *See Honey from Argentina,* 73 FR at 79805.

In implementing these principles, we examined information from Borusan and Toscelik regarding the marketing stages involved in the reported home market and EP sales, including a description of the selling functions performed by Borusan and Toscelik for the channels of distribution in the home market and U.S. market. *See* Borusan's September 3, 2010, Section A response and Toscelik's September 3, 2010, Section A response. We analyzed the selling functions, as noted below, by grouping them into the following selling function activities: sales process and marketing support, freight and delivery, inventory maintenance, and quality assurance/warranty service.

For home market sales, we found that Borusan's mill direct sales comprised one LOT. Furthermore, Borusan provided similar selling functions to each type of customer (*i.e.* trading companies/distributors and industrial end-users/construction companies), with the exception of rebates grouped into the sales process and marketing category which were given to trading companies/distributors. *See* pages A–17–18 and Exhibit A–6 of Borusan's September 3, 2010, response.

We found that Borusan's U.S. sales were also made at only one LOT. Borusan reports one channel of distribution, and sales are negotiated on an order-by-order basis with an unaffiliated trading company. *See* page A–20–22 of Borusan's September 3, 2010, response.

We then compared Borusan's home market LOT and with the U.S. LOT. We note the selling functions do not differ for the activities falling under inventory

maintenance (*i.e.,* forward inventory maintenance and sales from warehouse), quality assurance/warranty service (*i.e.,* provide warranty service), and freight and delivery (*i.e.,* act as agent or coordinate production/delivery for customer with mill and coordinate freight and delivery arrangement). Furthermore, we note that the selling functions grouped under sales process and marketing, such as customer advice/product information, discounts, advertising, and rebates only differ somewhat between the home market LOT and U.S. LOT. *See* page A–17–23 of Borusan's September 3, 2010, response. Therefore, we determined that Boursan's single LOT in the U.S. market is comparable with the LOT in the home market and did not find it necessary to make a LOT adjustment.

In the home market, Toscelik reported that they sold through one channel of distribution: Ex works. Toscelik also reported that they sold to one customer category, distributors. Toscelik reported the following selling activities in the home market: (1) Packing, (2) Order Input/Processing, (3) Direct Sales Personnel, (4) Sales/Marketing Support, and (5) Warranty Service. *See* Toscelik's section A–D antidumping questionnaire response ("Toscelik QR response"), dated September 3, 2010, at Exhibit 6. We found Toscelik's home market sales constitute one level of trade.

In the U.S. market, Toscelik made direct sales on an EP basis through one channel of distribution to unaffiliated trading companies. Toscelik identified the following selling activities in the U.S. market: (1) Packing, (2) Order Input/Processing, (3) Direct Sales Personnel, and (4) Sales/Marketing Support. *Id.* We found that Toscelik's sales to the United States were made to one LOT. Further, we find only minor differences between the sole home market LOT and that of Toscelik's U.S. LOT. Accordingly, we preliminarily determine that Toscelik's home market LOT and U.S. LOT are comparable, and that a LOT adjustment is not appropriate for Toscelik in this case.

D. Cost-Averaging Methodology

The Department's normal practice is to calculate an annual weighted-average cost for the POR. *See Certain Pasta From Italy: Final Results of Antidumping Duty Administrative Review,* 65 FR 77852 (December 13, 2000), and accompanying Issues and Decision Memorandum at Comment 18, and *Notice of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada,* 71 FR 3822 (January 24, 2006), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). However, we recognize that possible distortions may result if we use our normal annual-average cost method during a period of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence using two primary factors: (1) The change in the cost of manufacturing ("COM") recognized by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter averaging periods could be reasonably linked with the cost of production ("COP") or constructed value ("CV") during the same shorter averaging periods. *See Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review,* 75 FR 6627 (February 10, 2010) ("*SSSS from Mexico*"), and accompanying Issues and Decision Memorandum at Comment 6 and *Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review,* 73 FR 75398 (December 11, 2008) ("*SSPC from Belgium*"), and accompanying Issues and Decision Memorandum at Comment 4.

1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low- quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual average cost approach. *See SSPC from Belgium* at Comment 4. In the instant case, record evidence shows that both Borusan and Toscelik experienced significant changes (*i.e.,* changes that exceeded 25 percent) between the high and low quarterly COM during the POR for the highest sales volume welded pipe and tube products. *See* Memorandum from Laurens van Houten to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Borusan Mannesmann Boru Sanayi ve Ticaret A.S." ("Borusan Cost Calculation Memo") and Memorandum from Laurens van Houten to Neal M. Halper, Director of Office of Accounting, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Toscelik Profil ve Sac Endustrisi S.A.," ("Toscelik Cost Calculation Memo") dated May 31, 2011. This change in COM is attributable primarily to the price volatility for hot-rolled carbon steel coil used in the manufacture of welded pipe and tube. *See id.* We found that prices for hot-rolled carbon steel coil changed significantly throughout the POR and, as a result, directly affected the cost of the material inputs consumed by Borusan and Toscelik. *See id.*

2. Linkage Between Cost and Sales Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR. *See SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4. Absent a surcharge or other pricing mechanism, the Department may alternatively look for evidence of a clear pattern that changes in selling prices reasonably correlate to changes in unit costs. *See SSPC from Belgium* at Comment 4. To determine whether a reasonable correlation existed between the sales prices and their underlying costs during the POR, for each respondent, we compared weighted-average quarterly prices to the corresponding quarterly COM for the control numbers ("CONNUMs") with the highest volume of sales in the comparison market and the United States. Our comparison revealed that sales and costs for a majority of the selected CONNUMs for Borusan showed reasonable correlation. *See* Borusan's Cost Calculation Memo. After reviewing this information and determining that changes in selling prices reasonably correlate to changes in unit costs, we preliminarily determine that there is linkage between Borusan's changing costs and sales prices during the POR. *See id. See also SSSS from Mexico* at Comment 6 and *SSPC from Belgium* at Comment 4. Because we have found significant cost changes in COM as well as reasonable linkage between costs and sales prices, we have preliminarily determined that a quarterly costing approach is appropriate for Borusan.

For Toscelik, however, our analysis revealed that the quarterly average sales prices and costs did not show reasonable correlation. *See* Toscelik's Cost Calculation Memo. Although we have found significant cost changes in COM, we have not found reasonable linkage between costs and sales prices. Therefore, for Toscelik, we have used our normal annual average cost methodology for the preliminary results.

E. Cost of Production Analysis

The Department disregarded sales below the COP in the last completed

review in which Borusan and Toscelik participated. *See 2007–08 Administrative Review* and *Notice of Preliminary Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey,* 71 FR 26043 (May 3, 2006), unchanged in *Notice of Final Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube From Turkey,* 71 FR 43444, (August 1, 2006). Thus, in accordance with section 773(b)(2)(A)(ii) of the Act, there are reasonable grounds to believe or suspect that Borusan and Toscelik made sales of the subject merchandise in their comparison market at prices below the COP in the current review period. Thus, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Borusan and Toscelik.

1. Calculation of Cost of Production

Before making any comparisons to NV, we conducted a sales below cost analysis of Borusan and Toscelik pursuant to section 773(b) of the Act, to determine whether Borusan's and Toscelik's comparison market sales were made at prices below the COP. We compared sales of the foreign like product in the home market with model-specific COP figures. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication employed in producing the foreign like product, plus amounts for SG&A expenses, financial expenses and all costs incidental to placing the foreign like product in packed condition and ready for shipment.

In our sales-below-cost analysis, we relied on the COP information provided by Borusan and Toscelik in their questionnaire responses except in the case of Toscelik, where we have calculated an annual weighted average material cost for each control number and we calculated the net financial expense ratio based on the December 31, 2009, consolidated financial statements of Tosyali Holdings A.S. *See* Toscelik's Cost Calculation Memo.

2. Test of Comparison Market Prices

In determining whether to disregard Borusan's and Toscelik's home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. As noted in section 773(b)(2)(D) of the Act, prices are considered to provide for recovery of costs if such prices are above the weighted average per-unit COP for the period of investigation or review. We determined the net comparison market prices for the below-cost test by subtracting from the gross unit price any applicable movement charges, discounts, direct and indirect selling expenses, and packing expenses. *See* Toscelik Sales Calculation Memo and Borusan Sales Calculation Memo.

As discussed above, we have determined it appropriate to rely on our alternative quarterly cost calculation approach for Borusan in this review. In light of the Court's decisions in *SeAH Steel Corp.* v. *United States,* 704 F. Supp. 2d 1353 (Ct. Int'l Trade 2010), and *SeAH Steel Corporation* v. *United States,* 2011 Ct. Int'l. Trade LEXIS 32, Slip. Op. 2011–33 (Ct. Int'l. Trade March 29, 2011) ("*SeAH Second Remand*"), we have used a new approach to testing for cost recovery when using our alternative quarterly cost methodology. Under this new approach, we calculated a CONNUM-specific weighted-average annual price using only those sales that failed the cost test, and compared the resulting weighted average price to the weighted-average annual cost per CONNUM. If the weighted-average annual price per CONNUM is above the weighted-average annual cost per CONNUM then we have restored all of the below-cost sales of that CONNUM to the normal value pool of sales available for comparison with U.S. sales. The Department believes this alternative complies with the statutory mandate at section 773(b)(2)(D) of the Act to use a weighted-average cost for the period. It also conforms with the Statement of Administrative Action H.R. Doc. No. 103–316, vol. 1, p. 832 (1994) which clarifies that "the determination of cost recovery is based on an analysis of actual weighted-average prices and cost during the period of investigation or review * * *" We invite interested parties to comment on this methodology in their case and rebuttal briefs.

In prior cases, we used an indexation methodology when calculating quarterly costs for both the sales-below-cost test and the cost recovery test. *See SSSS from Mexico* and *SSPC from Belgium.* Specifically, we indexed the quarterly average material costs reported for each CONNUM to the end of the POR, calculated a weighted-average cost for each CONNUM, and then indexed the weighted-average cost back to each quarter of the POR. In light of the *SeAH Second Remand,* which precluded the use of indexing in the cost recovery test, we have not used an indexing methodology when calculating quarterly costs for purposes of the cost recovery test in this review.

For the sales-below-cost test we have used the quarterly costs as recorded in Borusan's normal books and records and reported to the Department. We have not applied an indexation adjustment to Borusan's reported quarterly average cost because there is no indication that such costs, which are based on their normal books and records, unreasonably reflect the cost to produce such merchandise.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product were at prices less than the COP we disregarded the below-cost sales because: (1) They were made within an extended period of time in "substantial quantities," in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of POR prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

Our cost test for Toscelik revealed that, for home market sales of certain models, less than 20 percent of the sales of those models were made at prices below the COP. Therefore, we retained all such sales in our analysis and included them in determining NV. Our cost test for Toscelik also indicated that for home market sales of other models, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we excluded these below cost sales from our analysis and used the remaining above-cost sales to determine NV. *See* Toscelik Sales Calculation Memo.

F. Calculation of NV Based on Comparison Market Prices

For Borusan and Toscelik, for those comparison products for which there were sales at prices above the COP, we based NV on home market prices. In these preliminary results, we were able to match all U.S. sales to contemporaneous sales, made in the

ordinary course of trade, with sales of either an identical or a similar foreign like product, based on matching characteristics. We calculated NV based on ex works or delivered prices to unaffiliated customers, or prices to affiliated customers which were determined to be at arm's length (*see* discussion above regarding these sales). We made adjustments, where appropriate, from the starting price for billing adjustments, discounts, rebates, and inland freight. Additionally, we added interest revenue. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs.

In accordance with section 773(a)(6)(C)(iii) of the Act, we adjusted for differences in the circumstances of sale. These circumstances included differences in imputed credit expenses [5] and other direct selling expenses, such as the expense related to bank charges and factoring. We also made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones Business Information Services.

Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. The benchmark rate is defined as the rolling average of the rates for the past 40 business days. When we determine that a fluctuation existed, we generally utilize the benchmark rate instead of the daily rate, in accordance with established practice. We did not find that a fluctuation existed during the POR in this case and therefore, used the daily exchange rate.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the following margin exists for the period May 1, 2008, through April 30, 2009:

Manufacturer/exporter	Weighted-average margin (percent)
Borusan	5.26
Toscelik	4.74

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on a diskette. Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any written comments or hearing, within 120 days from publication of this notice.

Assessment

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act and 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties 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. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of 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). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these preliminary results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective upon publication of the final results of this administrative review for all shipments of welded pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the companies listed above will be the rates established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 14.74 percent, the "All Others" rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations 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 Secretary's 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.

[5] We recalculated credit expense for all sales where payment date occurred before the shipment date and zero was reported as the imputed credit expense. In addition, we recalculated credit for sales with a missing payment date using May 31, 2011, the date of the preliminary results. *See* Toscelik Sales Calculation Memo.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14032 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes From Taiwan

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan for the period of review (POR) of May 1, 2009, to April 30, 2010. We preliminarily determine that sales of subject merchandise by Yieh Phui Enterprise Co., Ltd. (Yieh Phui) have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries. Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Bezirganian or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1131 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1984, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Antidumping Duty Order,* 49 FR 19369 (May 7, 1984) (*Antidumping Duty Order*). On May 3, 2009, the Department issued a notice of opportunity to request an administrative review of this order for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236, 23237 (May 3, 2010). On June 1, 2010, a domestic producer, U.S. Steel Corporation (petitioner), requested an administrative review of Yieh Phui Enterprise Co., Ltd. (Yieh Phui) and Yieh Hsing Enterprise Co., Ltd. (Yieh Hsing). Yieh Phui requested an administrative review of itself on June 1, 2010. On June 30, 2010, the Department published the notice of initiation of this antidumping duty administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). The Department issued its original questionnaire to Yieh Phui and Yieh Hsing on July 1, 2010.

On November 18, 2010, the Department published a notice rescinding the review with respect to Yieh Hsing, following petitioner's withdrawal of its request for an administrative review of that company. *See Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 70723 (November 18, 2010).

Yieh Phui submitted a response to Section A of the Department's questionnaire on July 29, 2010, and a response to Sections B, C, and D of the Department's questionnaire on August 23, 2010. In response to the Department's September 1, 2010, supplemental questionnaire pertaining to Yieh Phui's Section A response, Yieh Phui submitted a response on September 29, 2010. In response to the Department's September 13, 2010, supplemental questionnaire pertaining to Yieh Phui's Section D response, Yieh Phui submitted a response on October 15, 2010. In response to the Department's October 14, 2010, supplemental questionnaire covering Sections A–C, Yieh Phui submitted a response on November 9, 2010. In response to the Department's December 10, 2010, supplemental questionnaire covering Sections A–D, Yieh Phui submitted a response on January 7, 2011. In response to the Department's January 24, 2011 supplemental questionnaire, Yieh Phui submitted a response on February 14, 2011. On March 25, 2011, the petitioner submitted comments and recommendations for the Department to consider in reaching its preliminary results. On April 20, 2011, Yieh Phui provided a response to the petitioner's March 25, 2011 comments and recommendations.

On January 20, 2011, the Department extended the deadline for completion of the preliminary results by 120 days, to May 31, 2011. *See Circular Welded Pipes and Tubes from Taiwan: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 3612 (January 20, 2011).

Scope of the Order

The merchandise covered by this order is certain circular welded carbon steel pipes and tubes from Taiwan, which are defined as: Welded carbon steel pipes and tubes, of circular cross section, with walls not thinner than 0.065 inch, and 0.375 inch or more but not over 4.5 inches in outside diameter, currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Comparisons to Normal Value

To determine whether sales of certain circular welded carbon steel pipes and tubes to the United States were made at less than NV, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice.

Pursuant to sections 773(a)(1)(B)(i) and 777A(d)(2) of the Act, for Yieh Phui, we compared the EPs of individual transactions, as applicable, to the weighted-average NV of the foreign like product in the appropriate corresponding calendar month where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production Analysis" section below.

Export Price

For the price to the United States, we used export price (EP), as defined in section 772(a) of the Tariff Act of 1930, as amended (the Act). Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under section 772(c) of the Act (*see* discussion immediately below). We calculated an EP for Yieh Phui's U.S. sales because they were made directly to the first unaffiliated purchaser in the United States prior to importation and

constructed export price (CEP) was not otherwise warranted based on the facts on the record.

For EP sales, we made deductions from the starting price (gross unit price), where appropriate, for movement expenses in accordance with section 772(c)(2) of the Act. Movement expenses included foreign inland freight (from plant to warehouse, and from plant to port of exportation), foreign warehousing expenses, foreign brokerage fees, foreign trade promotion fees, foreign harbor maintenance fees, and international freight (consisting of ocean freight, bill of lading documentation fees, and containerization fees).

Normal Value

A. Selection of Comparison Market

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is not a particular market situation that prevents a proper comparison with sales to the United States. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. *See* section 773(a)(1) of the Act.

We found that Yieh Phui had a viable home market for circular welded carbon steel pipes and tubes because its home market sales, by quantity, exceeded the five percent threshold. *See* Yieh Phui's November 9, 2010, supplemental questionnaire response, at Exhibit 3.

Yieh Phui submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the "Calculation of Normal Value Based on Comparison Market Prices" section below.

B. Arm's-Length Sales

The respondent reported sales of the foreign like product to affiliated customers, which, according to Yieh Phui, consumed the merchandise. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market,* 67 FR 69186 (November 15, 2002). Yieh Phui's sales to affiliated parties that were determined not to be at arm's length were disregarded in the cost test and in the comparison to U.S. sales.

C. Cost of Production Analysis

Because we disregarded below-cost sales in the most recently completed segment of the proceeding, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondent were made at prices below the cost of production (COP) during the POR, in accordance with section 773(b)(2)(A)(ii) of the Act. Therefore, we required Yieh Phui to submit a response to Section D of the Department's Questionnaire.[1]

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP by model based on the sum of materials, fabrication, general and administrative (G&A), and interest expenses.[2] For more details, *see* "Analysis Memorandum for Yieh Phui Enterprise Co., Ltd. (Yieh Phui): Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008), May 1, 2009–April 30, 2010" ("Yieh Phui Preliminary Analysis Memorandum"). Based on the review of record evidence, Yieh Phui did not appear to experience significant changes in cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

2. Test of Comparison Market Sales Prices

We compared the weighted-average COPs for the respondent to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.,* normally a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below-cost sales where: (1) 20 Percent or more of the respondent's sales of a given product during the POR were made at prices below the COP in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on comparisons of price to weighted-average COPs for the POR, we determine that the below-cost sales of the product were at prices that would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found Yieh Phui made sales below cost and we disregarded such sales where appropriate. *See* "Yieh Phui Preliminary Analysis Memorandum."

D. Calculation of Normal Value Based on Comparison-Market Prices

We determined NV for Yieh Phui as follows. We made deductions from the gross price to account for discounts and rebates. We deducted home market packing costs and added U.S. packing costs, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we made adjustments to normal value for comparison to Yieh Phui's EP transactions by deducting direct selling expenses incurred for home market sales (*i.e.,* credit expenses) and adding U.S. direct selling expenses (*i.e.,* credit expenses, bank charges, and cargo certification fees) and U.S. commissions. *See* section 773(a)(6)(C)(iii) of the Act, and 19 CFR 351.410(c). Where we compared Yieh Phui's U.S. sales to home market sales

[1] We disregarded below-cost sales in the most recently completed segment of the proceeding as of the initiation of this administrative review (*see Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 69 FR 31958, 31960 (June 8, 2004) (unchanged in final results, *Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review,* 69 FR 58390 (September 30, 2004)). The respondent in the most recently completed segment of the proceeding as of the initiation of this administrative review was Yieh Hsing Enterprise Co., Ltd. However, the Department found Yieh Phui to be the successor-in-interest to Yieh Hsing Enterprise Co., Ltd. *See Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Final Results of Antidumping Duty Changed Circumstance Review,* 70 FR 71802 (November 30, 2005). Accordingly, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by the respondent were made at prices below the COP during the POR. *See* section 773(b) of the Act.

[2] *See* "Cost of Production and Constructed Value Memorandum for the Preliminary Results: Yieh Phui Enterprise Co., Ltd.: Circular Welded Carbon Steel Pipes and Tubes from Taiwan (A–583–008), May 1, 2009–April 30, 2010" regarding Yieh Phui's reported COP.

of merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those models of circular welded carbon steel pipes and tubes for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Sections 773(e)(1) and (e)(2)(A) of the Act provide that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general and administrative expenses (SG&A), interest expenses, profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We deducted direct selling expenses incurred for home market sales (*i.e.,* credit expenses). *See* section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c). We added U.S. direct selling expenses (*i.e.,* credit expenses, bank charges, and cargo certification fees) and U.S. commissions to the NV.

F. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP and CEP sales, to the extent practicable. When there are no sales at the same LOT, we compare U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to 19 CFR 351.412(c)(2), to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's-length affiliated) customers. The Department identifies the LOT based on: The starting price or constructed value (for normal value); the starting price (for EP sales); and the starting price, as adjusted under section 772(d) of the Act (for CEP sales). If the comparison-market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

Finally, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

Yieh Phui indicated there was a single level of trade for all sales in both markets, and petitioner has not claimed that multiple levels of trade existed for Yieh Phui. Yieh Phui provided information regarding channels of distribution and selling activities performed for different categories of customers. *See* Yieh Phui's July 29, 2010, Section A response, at pages 12–14 and Exhibit 8. Yieh Phui's chart of numerous specific selling functions indicates the selling functions performed for sales in both markets are virtually identical, with no significant variation across the broader categories of sales process/marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. For more details, *see* Yieh Phui Preliminary Analysis Memorandum. We have preliminarily determined there is one single level of trade for all sales in both the home market and the U.S. market and, therefore, that no basis exists for a level of trade adjustment.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act, based on exchange rates in effect on the date of the U.S. sale, as provided by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following weighted-average margin exists for the period May 1, 2009, through April 30, 2010:

Weighted-average	Producer/exporter margin (percentage)
Yieh Phui Enterprise Co., Ltd	11.47

Disclosure and Public Comment

In accordance with 19 CFR 351.224(b), the Department will disclose calculations performed within five days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments must be limited to issues raised in case briefs or written comments, and may be filed no later than five days after submission of case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the arguments; and (3) a table of authorities. Further, parties submitting written comments should provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held two days after the date for submission of rebuttal briefs, or the first working day thereafter. The Department intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3) of the Act.

Assessment

Upon completion of the administrative review, pursuant to 19 CFR 351.212(b), the Department will calculate an assessment rate on all appropriate entries. The Department intends to issue appropriate appraisement instructions for the company subject to this review directly to CBP 15 days after the date of publication of the final results of this review.

Because Yieh Phui did not report the entered value of its sales, we will calculate importer-specific (or customer-specific) per-unit duty assessment rates by aggregating the total amount of antidumping duties calculated for the examined sales of each importer (or customer) and dividing each of these amounts by the respective quantities (by weight) associated with those sales. To determine whether the duty assessment rates are *de minimis,* in accordance with

the requirement set forth in 19 CFR 351.106(c)(2), we will calculate importer-specific (or customer-specific) *ad valorem* ratios based on estimated entered values.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review for each importer (or customer) for which the importer-specific (or customer-specific) *ad valorem* ratio is above *de minimis* (*i.e.,* at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific (or customer-specific) *ad valorem* ratio is *de minimis* (*i.e.,* less than 0.50 percent).

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 will apply to entries of subject merchandise during the POR produced by the company included in the final results where the reviewed companies did not know the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there was no rate calculated in this review for the intermediary involved in the transaction. *See id.,* 68 FR at 23954.

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Yieh Phui will be the rate established in the final results of this review, except if a rate is less than 0.50 percent, and therefore *de minimis,* the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 9.70 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Order.*

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of antidumping administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14031 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–977)]

High Pressure Steel Cylinders from the People's Republic of China: Initiation of Antidumping Duty Investigation

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Lord, Emeka Chukwudebe, or Matthew Renkey, AD/CVD Operations, Office 9, (202) 482–7425, (202) 482–0219, or (202) 482–2312, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On May 11, 2011, the Department of Commerce ("Department") received a petition concerning imports of high pressure steel cylinders ("steel cylinders") from the People's Republic of China ("PRC") filed in proper form by Norris Cylinder Company [1] ("Petitioner"). *See* Petitions for the Imposition of Antidumping and Countervailing Duties: High Pressure Steel Cylinders from the People's Republic of China dated May 11, 2011, ("Petition"). On May 13, 2011, the Department issued a supplemental questionnaire requesting information and clarification of certain areas of the Petition. Petitioner timely filed additional information on May 20, 2011.[2]

Period of Investigation

The period of investigation ("POI") is October 2010 through March 2011. *See* 19 CFR 351.204(b)(1).

In accordance with section 732(b) of Tariff Act of 1930, as amended ("the Act"), Petitioner alleges that imports of steel cylinders from the PRC are being, or are likely to be, sold in the United States at less than fair value, within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, an industry in the United States. Also, consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to Petitioner supporting its allegations.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the antidumping duty investigation that Petitioner is requesting the Department to initiate (*see* "Determination of Industry Support for the Petition" section below).

Scope of Investigation

The products covered by the scope of this investigation are steel cylinders from the PRC. For a full description of the scope of the investigation, *see* "Scope of Investigation," in Appendix I of this notice.

Comments on Scope of Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the "Scope of Investigation" language has been modified from the language in the Petition to reflect these clarifications. *See* Memo to the File from Meredith A.W. Rutherford regarding Petitions for the Imposition of Antidumping Duties and Countervailing Duties on High Pressure Steel Cylinders

[1] Norris Cylinder Company ("Norris") identifies itself as the sole producer of the domestic like product based on its knowledge of the industry. *See* Volume II of the Petition, at Exhibit II–1.

[2] *See* Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Imports of High Pressure Steel Cylinders from the People's Republic of China (the PRC): Supplemental Questions, dated May 20, 2011 ("Supplement to the AD/CVD Petition").

from the People's Republic of China; Conference Call with Petitioner, May 24, 2011.

Moreover, as discussed in the preamble to the regulations (*see Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, June 20, 2011, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC countervailing duty investigation. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Comments on Product Characteristics for Antidumping Duty Questionnaires

We are requesting comments from interested parties regarding the appropriate physical characteristics of steel cylinders to be reported in response to the Department's antidumping questionnaires. This information will be used to identify the key physical characteristics of the merchandise under consideration in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.

Interested parties may provide information or comments that they believe are relevant to the development of an accurate listing of physical characteristics. Specifically, they may provide comments as to which characteristics are appropriate to use as: (1) General product characteristics; and (2) the product comparison criteria. We note that it is not always appropriate to use all product characteristics as product comparison criteria. We base product comparison criteria on meaningful commercial differences among products. In other words, while there may be some physical product characteristics utilized by manufacturers to describe steel cylinders, it may be that only a select few product characteristics take into account commercially meaningful physical characteristics. In addition, interested parties may comment on the order in which the physical characteristics should be used in product matching. Generally, the Department attempts to list the most important physical characteristics first and the least important characteristics last.

In order to consider the suggestions of interested parties in developing and issuing the antidumping duty questionnaires, we must receive comments at the above-referenced address by June 20, 2011. Additionally, rebuttal comments must be received by June 27, 2011.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989)).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that steel cylinders constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Antidumping Duty Investigation Initiation Checklist: High Pressure Steel Cylinders from the People's Republic of China ("Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petition Covering High Pressure Steel Cylinders from the People's Republic of China, on file in the Central Records Unit ("CRU"), Room 7046 of the main Department of Commerce building.

In determining whether Petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section above. To establish industry support, Petitioner provided its production of the domestic like product in 2010. *See* Supplement to the AD/CVD Petitions, dated May 20, 2011("Supplement to the AD/CVD Petitions"), at 4. Petitioner maintains that it was the sole remaining producer of the domestic like product in 2010, and, therefore, alleges that it represents the total production of the domestic like product in 2010. *See* Volume I of the Petitions, at 3, and Supplement to the AD/CVD Petitions, at 4. To demonstrate that it was the sole producer, Petitioner provided an affidavit from the President of Norris Cylinder Company, who has many years of professional experience in the steel cylinders industry. *See* Volume II of the AD Petitions, at Exhibit

II–1, and Supplement to the AD/CVD Petitions, at 4. We have relied upon data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, we find that the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* Section 732(c)(4)(D) of the Act, and Initiation Checklist at Attachment II. Second, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II. Finally, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *Id.*

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the antidumping duty investigation that it is requesting the Department initiate. *Id.*

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at less than normal value ("NV"). In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, reduced capacity, underselling and price depression or suppression, reduced employment, a decline in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 11–22. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III, Injury.

Allegations of Sales at Less Than Fair Value

The following is a description of the allegations of sales at less than fair value upon which the Department based its decision to initiate this investigation of imports steel cylinders from the PRC. The sources of data for the deductions and adjustments relating to the U.S. price and the factors of production are also discussed in the Initiation Checklist. *See* Initiation Checklist, at 5–10.

U.S. Price

Petitioner calculated export price ("EP") based on the average unit customs value of U.S. imports of subject merchandise from China classified under the Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7311.00.00.30, as compiled by the U.S. Census Bureau and obtained from the ITC's Dataweb. Petitioner utilized two methodologies to calculate EP, with one methodology adjusting average unit value to account for differences in steel cylinders model prices.[3] Petitioner also made adjustments for domestic brokerage and handling and domestic inland freight. *See* Initiation Checklist; *see also* Volume II of the Petition, at 18–21 and Exhibit II–23.

Petitioner calculated constructed export price ("CEP") based on a proprietary source's pricing to unaffiliated U.S. end-users during the POI. Petitioner made adjustments for rebates, freight, value-added inputs, U.S. customs and duty fees, credit expense, domestic brokerage and handling, inland freight, and distributor markup. *See* Initiation Checklist; *see also* Volume II of the Petition, at 21–24 and Exhibits II–25 through II–28.

[3] The EP margins listed *infra* are based on this methodology.

Normal Value

Petitioner claims the PRC is a non-market economy ("NME") country and that no determination to the contrary has been made by the Department. *See* Volume II of the Petition, at 1. The presumption of NME status for the PRC has not been revoked by the Department and, therefore, in accordance with section 771(18)(C)(i) of the Act, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product for the PRC investigation is appropriately based on factors of production valued in a surrogate market-economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties, including the public, will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioner contends that India is the appropriate surrogate country for the PRC because: (1) it is at a level of economic development comparable to that of the PRC and (2) it is a significant producer of comparable merchandise. *See* Volume II of the Petition, at 1–2. Based on the information provided by Petitioner, we believe that it is appropriate to use India as a surrogate country for initiation purposes. After initiation of the investigation, interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioner calculated NV and the dumping margins using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. In calculating NV, Petitioner based the quantity of each of the inputs used to manufacture the domestic like product on its own consumption rates, modified where applicable. Petitioner states that it is not aware of publicly available information regarding the actual usage rates of Chinese producers to produce steel cylinders. However, Petitioner further notes that because Norris is one of a few producers worldwide, and there are only a few basic production methods used to produce steel cylinders, it is very familiar with the production process in the PRC. *See* Volume II of the Petition, at 4–18 and Exhibit II–7.

As noted above, Petitioner determined the consumption quantities of all raw materials based on its own production

experience. Petitioner valued most of the factors of production based on reasonably available, public surrogate country data, specifically, Indian import data from the Global Trade Atlas ("GTA"). *See* Initiation Checklist; *see also* Volume II of the Petition, at 6–12 and Exhibit II–9. Where required, Petitioner inflated surrogate values to the POI by means of the Wholesale Price Index ("WPI") for India. Because WPI data were not yet available for February and March 2011, the final two months of the POI, Petitioner assumed these figures were the same as that for January 2011 and calculated an average WPI for the POI accordingly. *See* Initiation Checklist; *see also* Volume II of the Petition, at Exhibit II–10. In addition, Petitioner made currency conversions, where necessary, based on the POI-average rupees/U.S. dollar exchange rate, as reported on the Department's Web site. *See* Initiation Checklist; *see also* Volume II of the Petition, at Exhibit II–9. Petitioner determined labor costs using the labor consumption, in hours, derived from Petitioner's own experience. *See* Initiation Checklist; *see also* Volume II of the Petition, at 12 and Exhibit II–17. For purposes of initiation, the Department determines that the surrogate values used by Petitioner are reasonably available and, thus, acceptable for purposes of initiation.

Petitioner determined energy and utility costs using Petitioner's own usage rates. To account for manufacturing differences between the U.S. and the PRC, Petitioner made adjustments to electricity and natural gas. *See* Initiation Checklist; *see also* Volume II of the Petition, at 13–14 and Exhibit II–1.

Petitioner determined labor costs using the usage rates derived from Petitioner's own experience and valued labor using data from *Nails AR1*.[4] *See* Initiation Checklist; *see also* Volume II of the Petition, at 12 and Exhibit II–17.

Petitioner determined packing costs using consumption rates derived from Petitioner's own experience, and valued the relevant factors using data from GTA. *See* Initiation Checklist; *see also* Volume II of the Petition, at 17–18 and Exhibits II–9 and II–15.

Petitioner calculated factory overhead, selling, general and administrative expenses, and profit by averaging data from the 2009–2010 financial statements of four Indian producers of steel cylinders: (1) Everest Kanto ("Everest"); (2) Rama Cylinders Private Limited ("Rama"); (3) Maruti Koastsu Cylinders Pvt. Limited ("Maruti"); and 4) Nitin Cylinders Limited ("NCL"). *See* Initiation Checklist; *see also* Volume II of the Petition, at 14–17 and Exhibit II–22.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe that imports of steel cylinders from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based on a comparison of U.S. prices and NV calculated in accordance with section 773(c) of the Act, as described above, the estimated EP dumping margins (adjusted according to model size), for steel cylinders from the PRC range from 85.10 percent to 176.25 percent, and the estimated CEP dumping margins range from 17.04 percent to 151.90 percent. *See* Initiation Checklist; *see also* Volume II of the Petition, at 24 and Exhibit II–7.

Initiation of Antidumping Investigation

Based upon the examination of the Petition on steel cylinders from the PRC, the Department finds the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of steel cylinders from the PRC are being, or are likely to be, sold in the United States at less than fair value. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

Targeted Dumping Allegations

On December 10, 2008, the Department issued an interim final rule for the purpose of withdrawing 19 CFR 351.414(f) and (g), the regulatory provisions governing the targeted dumping analysis in antidumping duty investigations, and the corresponding regulation governing the deadline for targeted dumping allegations, 19 CFR 351.301(d)(5). *See Withdrawal of the Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations,* 73 FR 74930 (December 10, 2008). The Department stated that "{w}ithdrawal will allow the Department to exercise the discretion intended by the statute and, thereby, develop a practice that will allow interested parties to pursue all statutory avenues of relief in this area." *Id.* at 74931.

In order to accomplish this objective, if any interested party wishes to make a targeted dumping allegation in this investigation pursuant to section 777A(d)(1)(B) of the Act, such allegation is due no later than 45 days before the scheduled date of the preliminary determination.

Respondent Selection

For this investigation, the Department will request quantity and value information from known exporters and producers identified with complete contact information in the Petition. The quantity and value data received from NME exporters/producers will be used as the basis to select the mandatory respondents.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rate application by the respective deadlines in order to receive consideration for separate-rate status. *See Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 73 FR 10221, 10225 (February 26, 2008); *Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China,* 70 FR 21996, 21999 (April 28, 2005). On the date of the publication of this initiation notice in the **Federal Register**, the Department will post the quantity and value questionnaire along with the filing instructions on the Import Administration Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html,* and a response to the quantity and value questionnaire is due no later than June 21, 2011. Also, the Department will send the quantity and value questionnaire to those PRC companies identified in Volume I of the Petition, at Exhibit I–1.

Interested parties must submit applications for disclosure under administrative protective order ("APO") in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's Web site at *http://ia.ita.doc.gov/apo*.

Separate-Rate Application

In order to obtain separate-rate status in NME investigations, exporters and producers must submit a separate-rate status application. *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries, dated April 5, 2005 ("Policy Bulletin"), available on the Department's web site at *http://ia.ita.doc.gov/policy/bull05–1.pdf.* Based on our experience in processing the separate-rate applications in previous antidumping duty investigations, we have modified the application for this investigation to

[4] *See Certain Steel Nails From the People's Republic of China: Final Results of the First Antidumping Duty Administrative Review,* 76 FR 16379 (March 23, 2011) ("Nails AR1").

make it more administrable and easier for applicants to complete. *See, e.g., Initiation of Antidumping Duty Investigation: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China,* 72 FR 43591, 43594–95 (August 6, 2007). The specific requirements for submitting the separate-rate application in this investigation are outlined in detail in the application itself, which will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of publication of this initiation notice in the **Federal Register.** The separate-rate application will be due 60 days after publication of this initiation notice. For exporters and producers who submit a separate-rate status application and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for consideration for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents. As noted in the "Respondent Selection" section above, the Department requires that respondents submit a response to both the quantity and value questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate-rate status. The quantity and value questionnaire will be available on the Department's Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html* on the date of the publication of this initiation notice in the **Federal Register**.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Policy Bulletin states:

> While continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of "combination rates" because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin at 6 (emphasis added).

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), copies of the public versions of the Petition have been provided to the representatives of the Government of the PRC. Because of the large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the Government of the PRC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, no later than June 27, 2011, whether there is a reasonable indication that imports of steel cylinders from the PRC are materially injuring, or threatening material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

Notification to Interested Parties

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. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information.[5] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011.[6] The formats for the revised certifications are provided at the end of the Interim Final Rule. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Scope of the Investigation

The merchandise covered by the scope of the investigation is seamless steel cylinders designed for storage or transport of compressed or liquefied gas ("high pressure steel cylinders"). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("DOT")-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A, 3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT–E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the investigation have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the investigation are high pressure steel cylinders manufactured to UN–ISO–9809–1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the investigation are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7311.00.00.30. Subject merchandise may also enter under

[5] *See* section 782(b) of the Act.

[6] *See* Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule, 76 FR 7491 (February 10, 2011)("Interim Final Rule") amending 19 CFR 351.303(g)(1) and (2).

HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

[FR Doc. 2011–14029 Filed 6–7–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Carbon and Certain Alloy Steel Wire Rod From Mexico: Initiation of Anti-Circumvention Inquiry of Antidumping Duty Order

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

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska or Eric B. Greynolds, 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) 482–8362 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION: In separate submissions filed on February 11, 2011, ArcelorMittal USA LLC, Gerdau Ameristeel U.S. Inc., and Rocky Mountain Steel, a division of Evraz Inc. NA, (collectively ArcelorMittal USA, *et al.*) and Nucor Corporation and Cascade Steel Rolling Mills, Inc. (collectively, Nucor/Cascade) requested that the Department of Commerce (the Department) initiate a scope inquiry, under 19 CFR 351.225(k)(2) to determine whether wire rod with an actual diameter between 4.75 and 5.00 millimeters (mm) is within the scope of the antidumping (AD) order on carbon and certain alloy steel wire rod from Mexico.[1] *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945 (October 29, 2002) (*Wire Rod Order*). Alternatively, petitioners argue that the Department should initiate an anti-circumvention inquiry with regard to two Mexican firms, Deacero S.A. de C.V. (Deacero) and Ternium Mexico S.A. de C.V. (Ternium), and find that wire rod with an actual diameter between 4.75 and 5.00 mm produced by these firms constitutes a "minor alteration" or a "later developed product" thereby resulting in shipments of such wire rod from Deacero and Ternium falling within the scope of the *Wire Rod Order. See* 19 CFR 351.225(i) and (j); *see also* sections 781(c) and (d) of the Tariff Act of 1930, as amended (the Act).

On March 14 and 23, 2011, Deacero filed comments rebutting petitioners' arguments. On March 24 and 25, 2011, petitioners responded to Deacero's comments. On March 25, 2011, Illinois Tool Works Inc. (ITW) filed comments objecting to petitioners' allegations. On March 28, 2011, the Department extended until May 16, 2011, the deadline for determining whether to initiate an inquiry into petitioners' allegations. On April 18, 2011, petitioners responded to the comments of ITW. On May 3, 2011, Deacero responded to the comments made in petitioners' March 24, and 25, 2011, submissions.

Scope of the Order

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) Stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.,* products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

[1] The term petitioners refers collectively to ArcelorMittal USA, *et. al.* and Nucro/Cascade.

The products within the scope of this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation of Minor Alterations Anti-Circumvention Proceeding

Section 781(c) of the Act provides that the Department may find circumvention of an AD order when products which are of the class or kind of merchandise subject to an AD order have been "altered in form or appearance in minor respects * * * whether or not included in the same tariff classification." Based on the arguments and information contained in petitioners' allegation, we find that there is a sufficient basis to initiate an anti-circumvention inquiry pursuant to section 781(c) of the Act and 19 CFR 351.225(i) to determine whether wire rod with an actual diameter measuring between 4.75 mm and 5.00 mm results from a minor alteration, and thus, a change so insignificant as to render such wire rod subject to the *Wire Rod Order.* For a summary of the comments received from interested parties and further discussion of the Department's basis for initiating this minor alteration inquiry, see the accompanying Memorandum to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, "Initiation of Minor Alteration Circumvention Inquiry on Wire Rod With an Actual Diameter Between 4.75 and 5.00 Millimeters," (Initiation Memorandum), of which the public version is on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

As explained in the Initiation Memorandum, the Department has declined to initiate on petitioners' allegation that the wire rod at issue constitutes a later-developed product as described under section 781(d) and 19 CFR 351.225(j). We based our determination on information submitted by Deacero that indicates that a Japanese firm made small-diameter wire rod (*e.g.,* rod with diameters as narrow as 4.2 mm) commercially available prior to the filing of the petition.

In addition, we have declined to initiate a scope inquiry under 19 CFR 351.225(k)(2) as requested by petitioners. As explained in the Initiation Memorandum, we find that the petition from the underlying investigation as well as information from the International Trade Commission (ITC) referenced in the petition indicates that the diameters referenced in the scope of the *Wire Rod Order* pertain to actual diameters. Therefore, we find that wire rod with an actual diameter of less than 5.00 mm is not within the scope of the *Wire Rod Order.*

Our finding under 19 CFR 351.225 (k)(1), that wire rod with an actual diameter that is less than 5.00 mm is not within the scope of the *Wire Rod Order,* is consistent with our decision under 19 CFR 351.225(i) To initiate a minor alteration anti-circumvention inquiry concerning wire rod with an actual diameter between 4.75 mm and 5.00 mm. In *Nippon Steel* the Court of Appeals for the Federal Circuit (CAFC) found that the Department may be precluded from conducting a minor alteration inquiry in instances in which the product is well-known prior to the order and was specifically excluded from the investigation. *See Nippon Steel Corp.* v. *United States,* 219 F.3d 1348, 1356 (Fed. Cir. 2000) (Nippon Steel). The *Wire Rod Order* does not specifically exclude wire rod with an actual diameter between 4.75 mm and 5.00 mm and, thus, the conditions necessary to preclude a minor alteration inquiry are not present. The Department reached the same conclusion in this regard in the *Wax Candles from the PRC Inquiry Prelim,* which was upheld in the *Wax Candles from the PRC Inquiry. See Later-Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order,* 71 FR 32033, 32037 (June 2, 2006) (*Wax Candles from the PRC Inquiry Prelim*), *see also Later-Developed Merchandise Anti-Circumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Anti-Dumping Duty Order,* 71 FR 59076–59076 (October 6, 2006) (*Wax Candles from the PRC Inquiry*), and accompanying Issues and Decision Memorandum (Wax Candles from the PRC Inquiry Decision Memorandum).

We are initiating this minor alteration anti-circumvention inquiry on Deacero and Ternium, the Mexican firms identified by petitioners in their circumvention allegations. However, within 45 days of the issuance of the initiation of this inquiry, if the Department receives sufficient evidence that other Mexican manufacturers are involved in the production of wire rod with an actual diameter between 4.75 mm and 5.00 mm, we will consider examining such additional manufacturers.

In accordance with 19 CFR 351.225(l)(2), if the Department issues a preliminary affirmative determination, we will then instruct CBP to suspend liquidation and require a cash deposit of estimated duties on the merchandise from firms covered by the determination.

The Department will, following consultation with interested parties, establish a schedule for questionnaires and comments on the issues. The Department intends to issue its final determination within 300 days of the date of publication of this initiation.

This notice is published in accordance with sections 781(c) and 781(d) of the Act and 19 CFR 351.225(i).

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14047 Filed 6–7–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–938]

Citric Acid and Certain Citrate Salts from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review

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

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on citric acid and certain citrate salts from the People's Republic of China for the period September 19, 2008, through December 31, 2009. We preliminarily find that RZBC Co., Ltd. ("RZBC Co."); RZBC Import & Export Co., Ltd. ("RZBC I&E"); RZBC (Juxian) Co., Ltd. ("RZBC Juxian"); and RZBC Group Co., Ltd. ("RZBC Group") (collectively, "RZBC"), and Yixing Union Biochemical Co., Ltd. ("Yixing Union Co.) and Yixing Union Cogeneration Co., Ltd. ("Cogeneration") (collectively, "Yixing Union") received countervailable subsidies during the period of review. If these preliminary results are adopted in our final results of this review, we will instruct U.S.

Customs and Border Protection to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: David Layton, Seth Isenberg, or Austin Redington, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 3069, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0371, (202) 482–0588, and (202) 482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, the Department of Commerce ("the Department") published a countervailing duty order on citric acid and certain citrate salts ("citric acid") from the People's Republic of China ("PRC"). *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Notice of Countervailing Duty Order,* 74 FR 25705 (May 29, 2009) ("*CVD Order*"). On May 3, 2010, we published a notice of "Opportunity to Request Administrative Review" for this countervailing duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 75 FR 23236 (May 3, 2010). On May 18, 2010, we received a request for administrative review from the RZBC; on May 24, 2010, we received a request for administrative review from Yixing Union. On June 1, 2010, we received a request from Archer Daniels Midland Company; Cargill, Incorporated; and Tate & Lyle Americas (collectively, "Petitioners") to conduct an administrative review of 56 companies, including RZBC and Yixing Union. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on June 30, 2010. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 37759 (June 30, 2010). On August 17, 2010, the Department issued a respondent selection memorandum selecting RZBC and Yixing Union as mandatory respondents. *See* Memorandum to Susan H. Kuhbach from Patricia M. Tran, regarding Respondent Selection: Countervailing Duty Administrative Review-Citric Acid and Certain Citrate Salts (August 17, 2010).

On September 27, 2010, Petitioners timely withdrew their request for an administrative review for 54 companies. On November 22, 2010, the Department published a partial rescission of review for these 54 companies, continuing the review with respect to RZBC and Yixing Union. *See Citric Acid and Certain Citrate Salts From People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review,* 75 FR 71078 (November 22, 2010).

On September 17, 2010, we issued countervailing duty questionnaires to the Government of the PRC ("GOC"), RZBC, and Yixing Union. We received responses to these questionnaires from RZBC and Yixing Union on November 9, 2010, and from the GOC on November 15, 2010. On February 28, 2011, we issued supplemental questionnaires to the GOC, RZBC, and Yixing Union. We received responses to the first supplemental questionnaires from each of the three respondents on March 28, 2011. On April 21, 2011, we issued second supplemental questionnaires, which also included some questions concerning the new subsidy allegations discussed below, to the GOC, RZBC, and Yixing Union. We received responses to the second supplemental questionnaire from the GOC on May 5, May 9, and May 10, 2011. We received responses to the second supplemental questionnaire from RZBC on May 9, and May 10, 2011, and from Yixing Union on May 9, 2011. The Department issued a third supplemental questionnaire to Yixing Union and RZBC on May 11, and May 16, 2011, respectively. Yixing Union responded to the third supplemental questionnaire on May 17, 2011, and RZBC responded to this questionnaire on May 19, 2011.

On August 16, 2010, Petitioners submitted new subsidy allegations requesting the Department examine two alleged subsidy programs that it had deferred examining in the investigation and one additional program, national policy lending. On December 2, 2010, Petitioners requested that the Department extend the deadline to submit new subsidy allegations. In response to Petitioners' request, the Department extended the deadline to submit new subsidy allegations until December 10, 2010. *See* Department's Letter to Petitioners granting their extension request (December 3, 2010), which is on file in the Central Records Unit ("CRU") in room 7046 in the main Department building. On December 10, 2010, Petitioners submitted new subsidy allegations requesting the Department expand its countervailing duty administrative review to include five additional subsidy programs, and separately requesting that the Department investigate Yixing Union's creditworthiness. The Department rejected the new subsidy allegations because the Petitioners failed to adequately identify the originators of the business proprietary information included in the submission, and it provided Petitioners with the opportunity to resubmit these allegations by December 15, 2010. The Petitioners resubmitted the allegations on December 15, 2010.

In response to Petitioners' new subsidy allegations, RZBC, the GOC, and Yixing Union (collectively, "Respondents") submitted comments on December 27, December 28, and December 30, 2010, respectively. Petitioners submitted a rebuttal to these comments on January 25, 2011. The Department removed the Petitioners' January 25 rebuttal submission from the record on February 17, 2011, because it contained untimely new factual information. Petitioners submitted a revised rebuttal to Respondents' comments on the new subsidy allegation on February 18, 2011, which excluded the untimely new factual information. On February 22, 2011, the Department issued a memorandum recommending investigating four of the five new subsidy allegations, as well as investigating Yixing Union's creditworthiness for long-term loans outstanding during the POR that originated between 2004 and 2009 and non-recurring subsidies for which we need to calculate a discount rate. *See* Memorandum to Susan H. Kuhbach, Director, Office 1 from David Layton and Seth Isenberg, International Trade Compliance Analysts, Office 1, "Analysis of New Subsidy Allegations" (February 10, 2011) ("NSA Memorandum"). On February 22, 2011, we issued questionnaires on the new subsidy allegations to the GOC, RZBC, and Yixing Union. We received responses to these new subsidy allegation questionnaires from the GOC, Yixing Union and RZBC on March 18, 2011. The Department issued first supplemental questionnaires on the new subsidy allegations to RZBC and Yixing Union on March 28, 2011, and to the GOC on April 14, 2011. RZBC and Yixing Union responded to the first supplemental questionnaires on April 4, 2011. We received responses to the first new subsidy allegation supplemental questionnaire from the GOC on April 27 and May 4, 2011. The Department issued second supplemental questionnaires on the new subsidy allegations to RZBC and Yixing Union

on April 14, 2011, and to the GOC on May 3, 2011. RZBC responded to its second new subsidy allegation supplemental questionnaire on May 3, 2011, and Yixing Union responded to its second new subsidy allegation supplemental questionnaire on May 3 and May 6, 2011.

On January 14, 2011, we published a postponement of the preliminary results in this review until May 31, 2011. *See Citric Acid and Certain Citrate Salts from People's Republic of China: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review,* 76 FR 2648 (January 14, 2011).

On April 27, 2011, Petitioners filed an allegation that RZBC Co., RZBC I&E, and RZBC Juxian were uncreditworthy from 2006 to 2009. We intend to address this allegation after issuance of these preliminary results.

On May 18, 2011, the GOC filed information to supplement its May 17, 2011, response to the Department's second new subsidy allegation supplemental questionnaire. The GOC did not request an extension for the deadline to submit this information. Therefore, in accordance with 19 CFR 351.302(d), the Department will return the May 18, 2011, filing to the GOC as untimely filed.

On May 13, 2011, Petitioners submitted information to rebut RZBC's May 3, 2011, new subsidy allegation supplemental questionnaire response. This submission included an alternate financial statement that RZBC allegedly filed with the Chinese Administrative Bureau of Industry and Commerce ("AIC"), as well as a sworn statement from a chemical expert that disputes RZBC's reported sulfuric acid consumption. On May 19, 2011, Petitioners submitted information to rebut Yixing Union's May 9, 2011, supplemental questionnaire response. This submission included an alternate financial statement that Yixing Union allegedly filed with the AIC. On May 24, 2011, Petitioners submitted comments arguing that the Department should apply total adverse facts available ("AFA") to both RZBC and Yixing Union due to the alleged existence of alternate financial statements. Further, Petitioners' submission argued that the Department should find the provision of steam coal for less than adequate remuneration ("LTAR") to be a countervailable subsidy and that a tier-two benchmark should be used to calculate the subsidy rate.

On May 24, 2011, Yixing Union requested that the Department reject Petitioners' May 19, 2011 comments as containing untimely filed new factual information or deny Petitioners' request for proprietary treatment of certain foreign market research included in the May 19, 2011, comments. Further, Yixing Union noted that it is unable to comment on the substance of Petitioners' allegations because of Yixing Union's inability to view the May 19, 2011, comments. Yixing Union asserts that the information contained in Petitioners' May 19, 2011, comments is not authentic.

These comments submitted by Petitioners and Yixing Union in May 2011, were filed too late for the Department's consideration in these preliminary results.

Scope of the Order

The scope of the order includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend. The scope of the order also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate. The scope of the order does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product. The scope of the order includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate, which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively. Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and 3824.90.9290 of the HTSUS, respectively. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.90.9290 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Scope Rulings

On November 2, 2010, Aceto Corporation ("Aceto") requested that the Department find its calcium citrate USP to be outside the scope of the *CVD Order* and the antidumping duty orders on citric acid and certain citrate salts from the PRC and Canada. *See Citric Acid and Certain Citrate Salts from Canada and the People's Republic of China: Antidumping Duty Orders,* 74 FR 25703 (May 29, 2009). On February 14, 2011, the Department issued a final scope ruling, finding that Aceto's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Citric Acid and Certain Citrate Salts: Scope Ruling for Calcium Citrate USP" (February 14, 2011).

On July 26, 2010, Global Commodity Group LLC ("GCG") requested that the Department find a blend of citric acid it imports containing 35 percent citric acid from the PRC and 65 percent citric acid from other countries is outside the scope of the *CVD Order* and the antidumping duty order on citric acid and certain citrate salts from the PRC. On May 2, 2011, the Department issued a final scope ruling, finding that GCG's product is within the scope of those orders. *See* Memorandum from Christopher Siepmann, International Trade Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Citric Acid and Certain Citrate Salts: Final Determination on Scope Inquiry for Blended Citrate Acid from the People's Republic of China and Other Countries (May 2, 2011). Pursuant to this ruling, we have instructed U.S. Customs and Border Protection ("CBP") that the quantity of citric acid from the PRC in the commingled merchandise is subject to the CVD and AD orders. We have also instructed the CBP that if the quantity of citric acid from the PRC in a commingled shipment cannot be accurately determined, then the entire commingled quantity is subject to the orders.

Period of Review

The period for which we are measuring subsidies, *i.e.,* the period of review ("POR"), is September 19, 2008,

through December 31, 2009.[1] Because the POR spans two calendar years, we are calculating separate countervailing duty rates for September 19, 2008, through December 31, 2008; and January 1, 2009, through December 31, 2009.

Application of the Countervailing Duty Law to Imports From the PRC

On October 25, 2007, the Department published *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 72 FR 60645 (October 25, 2007) ("*CFS from the PRC*"), and the accompanying Issues and Decision Memorandum ("CFS Decision Memorandum"). In *CFS from the PRC,* the Department found that

> given the substantial difference between the Soviet-style economies and China's economy in recent years, the Department's previous decision not to apply the CVD law to these Soviet-style economies does not act as {a} bar to proceeding with a CVD investigation involving products from China.

See CFS Decision Memorandum, at Comment 6. The Department has affirmed its decision to apply the CVD law to the PRC in subsequent final determinations. *See, e.g., Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances,* 73 FR 31966 (June 5, 2008) ("*CWP from the PRC*"), and accompanying Issues and Decision Memorandum ("CWP Decision Memorandum"), at Comment 1.

Additionally, for the reasons stated in the CWP Decision Memorandum, we are using the date of December 11, 2001, the date on which the PRC became a member of the World Trade Organization ("WTO"), as the date from which the Department will identify and measure subsidies in the PRC. *See* CWP Decision Memorandum, at Comment 2.

Use of Facts Otherwise Available and Adverse Inferences

Sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended ("the Act"), provide that the Department shall apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) Withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Notice of Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action ("SAA") accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol. 1 at 870 (1994)

RZBC—Sulfuric Acid

We requested the respondent companies to provide detailed information on all of their purchases of sulfuric acid during the POR, including the identities of the producers of the sulfuric acid. *See, e.g.,* RZBC new subsidy questionnaire issued by the Department on February 22, 2011, and again in a supplemental questionnaire issued on April 14, 2011. RZBC identified certain producers of the sulfuric acid it purchased. However, for some sulfuric acid purchases, RZBC failed to provide the requested producer information.

We preliminarily determine that RZBC withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that RZBC failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

Due to RZBC's failure to identify the producers of certain sulfuric acid it purchased, we are assuming adversely that these suppliers of sulfuric acid are "authorities" within the meaning of section 771(5)(B) of the Act.

GOC—Sulfuric Acid

On February 22, April 14, and May 3, 2011, we requested information from the GOC about the specific companies that produced the sulfuric acid purchased by the mandatory respondents. Specifically, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Although the GOC provided some of the requested information, it failed to provide certain necessary information. In particular, for certain suppliers, no information was submitted; for certain other suppliers that had some direct corporate ownership, the GOC failed to provide articles of association for each level of ownership, information as to whether any of the owners, members of the boards of directors or managers were also government officials or Chinese Communist Party ("CCP") officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval; and for other suppliers that were directly owned by individuals, the GOC generally failed to address whether any of the owners, members or the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval.

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements by now, yet, despite being given multiple opportunities, it either stated that it had contacted local authorities for the information or it simply did not submit requested information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

[1] For the purposes of the final results, we intend to analyze data for the period January 1, 2008, through December 31, 2008, to determine the subsidy rate for exports of subject merchandise made during the period in 2008 when liquidation of entries was suspended. In addition, we have analyzed data for the period January 1, 2009, through December 31, 2009, to determine the subsidy rate for exports during that period. The 2009 subsidy rate will serve as the cash deposit rate for exports of subject merchandise subsequent to the publication of the final results of this administrative review. *See* "Programs for Which More Information Is Required," below.

Due to the GOC's failure to provide the requested ownership information about the producers of the sulfuric acid purchased by the respondents, we are assuming adversely that all of the respondents' suppliers of sulfuric acid are "authorities."

GOC—Steam Coal

On February 22, April 14, and May 3, 2011, we requested information from the GOC about the specific companies that produced the steam coal purchased by Yixing Union Co.'s parent, Cogeneration. Specifically, we asked the GOC to provide particular ownership information for these producers so that we could determine whether the producers are "authorities" within the meaning of section 771(5)(B) of the Act. Although the GOC provided some of the requested information, it failed to provide certain necessary information. In particular, for certain suppliers, no information was submitted; for certain other suppliers that had some direct corporate ownership, the GOC failed to provide articles of association for each level of ownership, information as to whether any of the owners, members of the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval; and for other suppliers that were directly owned by individuals, the GOC generally failed to address whether any of the owners, members or the boards of directors or managers were also government officials or CCP officials, or whether operational and strategic decisions made by the management or boards of directors are subject to government review or approval. For one coal supplier directly owned by individuals, the GOC responded that none of the owners was a government or CCP official, but did not address whether managers or board members were.

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. The GOC is well aware of the Department's reporting requirements by now, yet, despite being given multiple opportunities, it simply did not submit requested information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

Due to the GOC's failure to provide the requested ownership information about the producers of the steam coal purchased by Cogeneration, we are assuming adversely that all of that company's suppliers of steam coal are "authorities."

GOC—RZBC's and Yixing Union's "Other Subsidies"

The financial statements and tax returns submitted by the responding companies indicated that they received potentially countervailable subsidies in the form of grants. Consequently, we sought further information from the responding companies about these grants, and also asked the GOC to provide information about the programs under which these grants were given. *See, e.g.,* supplemental questionnaires issued to Respondents on February 28, 2011, and the supplemental questionnaire issued to the GOC on April 21, 2011.

For certain programs identified below under "Programs Preliminarily Determined to be Countervailable: Other Subsidies," information submitted by the GOC and/or the company respondents showed that the grants were specific and countervailable. We normally rely on information from the government to assess program specificity, however, the GOC did not submit this information in all instances. Where Yixing Union or RZBC have submitted information about the specificity of programs included in "other subsidies," we have relied upon this information to make our determinations. However, for the remaining grants, addressed under "Programs Preliminarily Determined to Countervailable: Other Subsidies", the GOC did not provide the requested information about the programs under which they were given and the company-provided information was limited to the amount given, the date of the grant, and the granting authority. Where none of the Respondents has provided information that would allow us to determine the specificity of the "other subsidies" we have relied upon AFA for our determination.

For certain additional programs identified below under "Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR," the subsidy did not result in a measurable benefit, or the benefit was expensed prior to the POR (*see* 19 CFR 351.524(a)(2)).

We preliminarily determine that the GOC has withheld necessary information that was requested of it and, thus, that the Department must rely on "facts available" for these preliminary results. *See* section 776(a)(2)(A) of the Act. Moreover, we preliminarily determine that the GOC has failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, an adverse inference is warranted in the application of facts available. *See* section 776(b) of the Act.

Due to the GOC's failure to provide the requested information about the programs under which the grants received by RZBC and Yixing Union were provided, we are assuming adversely that these grants are being provided to a specific enterprise or industry, or group of enterprises or industries. *See* section 771(5A) of the Act.

Subsidies Valuation Information

Allocation Period

The average useful life ("AUL") period in this proceeding, as described in 19 CFR 351.524(d)(2), is 9.5 years according to the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System for assets used to manufacture the subject merchandise. Consistent with the Department's practice, we have rounded the 9.5 years up to 10 years for purposes of setting the AUL. *See Polyethylene Terephthalate Film, Sheet, and Strip From India: Preliminary Results and Rescission, in Part, of Countervailing Duty Administrative Review,* 72 FR 43607, 43608 (August 6, 2007), unchanged in final, 72 FR at 43608.

Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(iv) direct the Department to attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, or produce an input that is primarily dedicated to the production of the downstream product. In the case of a transfer of a subsidy between cross-owned companies, 19 CFR 351.525(b)(6)(v) directs the Department to attribute the subsidy to the sales of the company that receives the transferred subsidy.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists

between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations.

The Court of International Trade ("CIT") has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits. *See Fabrique de Fer de Charleroi* v. *United States,* 166 F. Supp. 2d 593, 600–604 (CIT 2001).

RZBC

RZBC Co. responded to the Department's original and supplemental questionnaires on behalf of itself, RZBC Group, RZBC Juxian and RZBC I&E. RZBC Co., RZBC Juxian, and RZBC I&E are wholly owned by RZBC Group and, hence, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). RZBC Co. and RZBC Juxian are both producers of subject merchandise; RZBC I&E is an exporter of subject merchandise; and RZBC Group is a headquarters company and does not produce any merchandise. Consequently, the subsidies received by these companies are being attributed according to the rules established in 19 CFR 351.525(b)(6)(ii), (c), and (b)(6)(iii), respectively. Moreover, different cross-owned affiliates among RZBC Co., RZBC Juxian, and RZBC I&E sell merchandise produced by RZBC Co. and RZBC Juxian to unaffiliated parties for both export and domestic sales. Therefore, to attribute properly the benefit from subsidies to RZBC Co. or RZBC Juxian we are preliminarily using the sales of RZBC Co.—or RZBC Juxian—produced merchandise by any of the three cross-owned affiliates to unaffiliated companies.

In its questionnaire responses, RZBC also identified prior owners of the company, *i.e.,* companies that owned RZBC Co. prior to the POR, but since the cut-off date of December 11, 2001. Given the level of these companies' ownership in RZBC Co., we asked that RZBC also respond on their behalf. These responses were submitted on May 10, 2011.

Based on the information provided by RZBC, we preliminarily determine that these prior owners are "cross-owned" with the RZBC companies (*see* 19 CFR 351.525(b)(6)(vi)). However, for these preliminary results we do not have the correct sales data to attribute certain subsidies the prior owners may have received. Moreover, we will provide the GOC an opportunity to submit information on the programs under which possible subsidies may have been granted. Therefore, with the exception of Shandong Province Policy Loans (for which no further information is required), we intend to address assistance to RZBC's prior owners in a post-preliminary analysis.

Also, RZBC I&E reported that it exports subject merchandise produced by other, unaffiliated companies, but that this merchandise was not exported to the United States during the POR. Although any subsidies to the unaffiliated producers would normally be cumulated with those of the trading company that sold their merchandise pursuant to 19 CFR 351.525(c), the Department has, in some instances, limited the number of producers it examines where their merchandise was not exported to the United States during the POR or accounted for a very small share of respondent's exports to the United States. *See, e.g., Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review,* 66 FR 64214 (December 12, 2001), and accompanying Issues and Decision Memorandum at "Attribution." In this review, we have not sent CVD questionnaires to the unaffiliated producers of citric acid whose merchandise was exported by RZBC I&E because their merchandise was not exported to the United States during the POR. Also, we have removed the sales of these products from RZBC I&E's sales for purposes of calculating countervailable subsidy rates for RZBC.

Yixing Union

Yixing Union Co. responded to the Department's original and supplemental questionnaires on behalf of itself and its parent and electricity supplier, Cogeneration. Yixing Union Co. and Cogeneration were found to be cross-owned in the investigation. *See Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 74 FR 16836 (April 9, 2009) ("*Citric Acid from the PRC*" or "*Investigation*"), and accompanying Issues and Decision Memorandum ("Citric Acid Decision Memorandum") at 9–10 and Comment 27.

We continue to find that Yixing Union Co. and Cogeneration are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi). Further, because Cogeneration is the parent of Yixing Union Co., we are attributing the subsidies received by Cogeneration according to the rule established in 19 CFR 351.525(b)(6)(iii).

Benchmarks and Discount Rates

The Department is investigating loans received by RZBC and Yixing Union from Chinese policy banks and state-owned commercial banks ("SOCBs"), as well as non-recurring, allocable subsidies (*see* 19 CFR 351.524(b)(1)). The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

Benchmark for Short-Term Renminbi ("RMB") Denominated Loans: Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company for benchmarking purposes. *See* 19 CFR 351.505(a)(3)(i). If the firm did not have any comparable commercial loans during the period, the Department's regulations provide that we "may use a national interest rate for comparable commercial loans." *See* 19 CFR 351.505(a)(3)(ii).

As noted above, section 771(5)(E)(ii) of the Act indicates that the benchmark should be a market-based rate. However, for the reasons explained in *CFS from the PRC,* loans provided by Chinese banks reflect significant government intervention in the banking sector and do not reflect rates that would be found in a functioning market. *See* CFS Decision Memorandum at Comment 10. Because of this, any loans received by respondents from private Chinese or foreign-owned banks in the PRC would be unsuitable for use as benchmarks under 19 CFR 351.505(a)(2)(i). Similarly, because of the Chinese government's significant presence in the banking sector, we cannot use a national interest rate for commercial loans as envisaged by 19 CFR 351.505(a)(3)(ii). Therefore, because of the special difficulties inherent in using a Chinese benchmark for loans, the Department is selecting an external, market-based benchmark interest rate. The use of an external benchmark is consistent with the Department's practice. For example, in *Softwood Lumber from Canada,* the Department used U.S. timber prices to measure the benefit for government-provided timber in Canada. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada,* 67 FR 15545 (April 2, 2002) ("*Softwood Lumber from*

Canada"), and accompanying Issues and Decision Memorandum ("Softwood Lumber Decision Memorandum") at "Analysis of Programs, Provincial Stumpage Programs Determined to Confer Subsidies, Benefit."

We are calculating the external benchmark using the regression-based methodology first developed in *CFS from the PRC* and more recently updated in *LWTP from the PRC. See* CFS Decision Memorandum at Comment 10; *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 57323 (October 2, 2008) ("*LWTP from the PRC*"), and accompanying Issues and Decision Memorandum ("LWTP Decision Memorandum"). *See also* LWTP Decision Memorandum at "Benchmarks and Discount Rates." This benchmark interest rate is based on the inflation-adjusted interest rates of countries with per capita gross national incomes ("GNIs") similar to the PRC. The benchmark interest rate takes into account a key factor involved in interest rate formation (*i.e.,* the quality of a country's institutions), which is not directly tied to the state-imposed distortions in the banking sector discussed above.

Following the methodology developed in *CFS from the PRC,* we first determined which countries are similar to the PRC in terms of GNI, based on the World Bank's classification of countries as: low income; lower-middle income; upper-middle income; and high income. The PRC falls in the lower-middle income category, a group that includes 55 countries.[2] As explained in *CFS from the PRC,* this pool of countries captures the broad inverse relationship between income and interest rates.

Many of these countries reported lending and inflation rates to the International Monetary Fund and are included in that agency's international financial statistics ("IFS"). With the exceptions noted below, we have used the interest and inflation rates reported in the IFS for the countries identified as "low middle income" by the World Bank. First, we did not include those economies that the Department considered to be non-market economies for antidumping duty purposes for any part of the years in question, for example: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Turkmenistan. Second, the pool necessarily excludes any country that did not report both lending and inflation rates to IFS for those years. Third, we removed any country that reported a rate that was not a lending rate or that based its lending rate on foreign-currency denominated instruments. For example, Jordan reported a deposit rate, not a lending rate, and the rates reported by Ecuador and Timor L'Este are dollar-denominated rates; therefore, the rates for these three countries have been excluded. Finally, for the calculation of the inflation-adjusted short-term benchmark rate, we also excluded any countries with aberrational or negative real interest rates for the year in question.

Because these are inflation-adjusted benchmarks, it is necessary to adjust the respondent's interest payments for inflation. This was done using the PRC inflation rate as reported in the IFS.

Benchmark for Long-Term RMB Denominated Loans: The lending rates reported in the IFS represent short- and medium-term lending, and there are no sufficient publicly available long-term interest rate data upon which to base a robust long-term benchmark. To address this problem, the Department has developed an adjustment to the short- and medium-term rates to convert them to long-term rates using Bloomberg U.S. corporate BB-rated bond rates. *See* LWTP Decision Memorandum at "Benchmarks and Discount Rates." In *Citric Acid from the PRC,* this methodology was revised by switching from a long-term mark-up based on the ratio of the rates of BB-rated bonds to applying a spread which is calculated as the difference between the two-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question. *See* Citric Acid Decision Memorandum at Comment 14. Finally, because these long-term rates are net of inflation as noted above, we adjusted the benchmark to include an inflation component.

Benchmarks for Foreign Currency-Denominated Loans: For foreign currency-denominated short-term loans, the Department used as a benchmark the one-year dollar interest rates for the LIBOR, plus the average spread between LIBOR and the one-year corporate bond rates for companies with a BB rating. *See* LWTP Decision Memorandum at 10. For long-term foreign currency-denominated loans, the Department added the applicable short-term LIBOR rate to a spread which is calculated as the difference between the one-year BB bond rate and the n-year BB bond rate, where n equals or approximates the number of years of the term of the loan in question.

Uncreditworthiness Benchmark: As discussed below, the Department is preliminarily finding that Yixing Union was uncreditworthy in 2009. To construct the uncreditworthy benchmark rate for those years, we used the long-term rates described above as the "long-term interest rate that would be paid by a creditworthy company" in the formula presented in 19 CFR 351.505(a)(3)(iii).

Discount Rates: Consistent with 19 CFR 351.524(d)(3)(i)(A), we have used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government agreed to provide the subsidy.

For the calculated benchmark and discount rates, *see* Memorandum to the File from Shane Subler, International Trade Compliance Analyst, Office 1, AD/CVD Operations, regarding "Benchmark Interest Rates" (March 28, 2011).

Creditworthiness

The examination of creditworthiness is an attempt to determine if the company in question could obtain long-term financing from conventional commercial sources. *See* 19 CFR 351.505(a)(4). According to 19 CFR 351.505(a)(4)(i), the Department will generally consider a firm to be uncreditworthy if, based on information available at the time of the government-provided loan, the firm could not have obtained long-term loans from conventional commercial sources. In making this determination, according to 19 CFR 351.505(a)(4)(i)(A)–(D), the Department normally examines the following four types of information: (1) Receipt by the firm of comparable commercial long-term loans; (2) present and past indicators of the firm's financial health; (3) present and past indicators of the firm's ability to meet its costs and fixed financial obligations with its cash flow; and (4) evidence of the firm's future financial position. If a firm has taken out long-term loans from commercial sources, this will normally be dispositive of the firm's creditworthiness. However, if the firm is government-owned, the existence of commercial borrowings is not dispositive of the firm's creditworthiness. This is because, in the case of a government-owned firm, a bank is likely to consider that the government will repay the loan in the event of a default. *See Countervailing Duties; Final Rule,* 63 FR 65348, 65367 (November 25, 1998). For government-owned firms, we will make our creditworthiness determination by examining receipt by the firm of comparable commercial long-term loans

[2] *See* The World Bank Country Classification, *http://econ.worldbank.org/.*

and the other factors listed in 19 CFR 351.505 (a)(4)(i).

Yixing Union

Petitioners alleged that Yixing Union was uncreditworthy for the period 2004 through 2009. For purposes of these preliminary results, we have limited our analysis to 2009. As discussed below, the Department has preliminarily determined that Yixing Union received countervailable national policy loans in that year. During the years 2006—2008, neither Yixing Union Co. nor Cogeneration received countervailable loans or allocable subsidies. For 2004 and 2005, as discussed below in the "Programs for Which More Information is Required" section, the Department requires additional information related to Cogeneration in order to complete its creditworthiness analysis.

Based on our analysis of the information described in 19 CFR 351.505(a)(4)(i)(A)–(D), we preliminarily determine that Yixing Union Co. was uncreditworthy in 2009. Yixing Union Co. did not receive commercial long-term loans in that year; its financial information indicated that the company could have problems meeting its costs and financial obligations with its cash flow, making it a significant credit risk to lenders; and there was no record evidence to suggest that the health of the citric acid industry or Yixing Union was due to improve in the near future. For further analysis, *see* Memorandum from Austin Redington, International Trade Compliance Analyst, through Yasmin Nair, Program Manager, to Susan Kuhbach, Senior Office Director, "Preliminary Creditworthiness Determination for Yixing-Union Biochemical Co., Ltd. and Yixing-Union Cogeneration Co., Ltd.," dated May 31, 2011.

RZBC

As noted above in the "Background" section, Petitioners filed an allegation that RZBC Co., RZBC I&E, and RZBC Juxian were uncreditworthy in years 2006 through 2009. We intend to address this allegation following the issuance of these preliminary results and will provide the parties with an opportunity to comment on our finding.

I. Programs Preliminarily Determined To Be Countervailable

A. Government Policy Lending

In the *Investigation,* the Department found that the Shandong Provincial government supported its citric acid industry with policy loans, *i.e.,* that loans made by policy banks and SOCBs in Shandong province conferred a subsidy on citric acid producers in Shandong. We also found that there was not a national program or a Jiangsu Province program of policy lending to citric acid producers. *See* Citric Acid Decision Memorandum at Comment 5. In this review, Petitioners provided new evidence that caused the Department to examine again allegations of national and Jiangsu provincial policy lending programs. *See* NSA Memorandum (February 10, 2011).

As explained below, we preliminarily determine that a national level policy lending program exists for citric acid as part of China's "light industry" and that there is not a Jiangsu Province policy lending program for citric acid. Because no information has been provided that would cause us to reach a different determination from the *Investigation* for Shandong Province, we preliminarily determine that the Shandong government's policy lending program continues.

National Policy Lending

In the *Investigation,* the Department concluded that there was not substantial evidence of policy lending to the citric acid industry at the national level because record evidence indicated that citric acid was not considered to be a "new biochemical product" targeted for support in the *Decision No. 40* and the *Catalogue on Readjustment of Industrial Structural Adjustment. See* Citric Acid Decision Memorandum at Comment 5, pages 52–53. In their new subsidy allegations for this administrative review, Petitioners provided evidence in the form of the USDA report concerning GOC support of industrial corn processors and GOC key product and high and new technology enterprise certificates held by a citric acid respondent company. Petitioners argue that the USDA report identifies industrial corn processors, including citric acid producers as a "key industry" for government support in 2000 and also indicates that "the industry was singled out for support in China's five-year plans for 2000–05 and 2009–10." Petitioners also argue that the special certificates held by RZBC that recognize it as a producer of a national key new product and recognize RZBC as a high and new technology enterprise reinforce the Petitioners' arguments from the investigation that citric acid is part of the encouraged new biochemical and food additive product categories. *See* Petitioners' Additional Subsidy Allegation (December 15, 2010) ("PNSA2") at 18–19.

In its initial new subsidy allegation questionnaire response, dated March 18, 2011 ("GNSAQR"), the GOC states that citric acid is not considered a "new biochemical product" in the PRC, but instead "is classified as light industry product as most citric acid is consumed by the food and beverage industry with"{o}nly 10% of citric acid produced is used in the chemical industry".[3] *See* GNSAQR at 17. In response to further questions on what constitutes a "new biochemical product," the GOC stated that there are no official criteria that the National Development and Reform Commission ("NDRC") uses to determine what constitutes a, "new biochemical product," other than it is not citric acid. The GOC provided a letter from the NDRC reiterating the preceding points and stating that "citric acid does not constitute a 'new biochemical product.'" *See* GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 1), (April 27, 2011) ("GNSASQR1, Part 1") at 6–7 and Exhibit 1. The NDRC letter also stated that "{g}iven that China's citric acid manufacturing technology is well-developed and the production capacity is redundant, relevant government agencies have placed constraints on the development of the industry since 2005."

The GOC also dismissed Petitioners' claims regarding the responding company's certificates, stating that RZBC's "national key new product" certificate was specific to the production of a specialized medical grade citric acid, and that it expired at the end of 2008. *See* GOC Comments on Petitioners' Additional New Subsidy Allegation, (December 27, 2010) ("GOC NSA Comments") at 11–12. With regard to RZBC's high and new technology designation, the GOC has reported that this certificate was provided under the auspices of the program for "Reduced Income Tax Rate for High or New Technology Enterprises," also addressed in the GOC's responses. *See* GOC Questionnaire Response (November 15, 2010) ("GQR"), at 16–24 and Exhibits I–8 and I–9; GOC Supplemental Questionnaire Response (February 28, 2011) ("GSQR"), at 6.

To document citric acid's classification as a light industry, the GOC provided a copy of the *Notice of the State Council on Light Industry Adjustment and Revitalization Plan* ("*Light Industry Plan*") and the *Guiding Category for Phasing-out outdated manufacturing devices and Products of Certain Industries (2010 edition)* ("*2010 Phase-out Plan*"). *See* GNSAQR (March

[3] We have requested that GOC clarify what is included in the 10% portion of citric acid used by the chemical industry, but to date the GOC has not responded to this.

18, 2011) at Exhibits 11 and 12. The GOC argues that Chinese government planners consider citric acid to be a developed industry with redundant and outdated production capacity and, thus, it is counterintuitive that it would also be included with the encouraged industry categories in the plans and catalogues. The GOC points to specific statements in the *Light Industry Plan,* the *2010 Phase-out Plan,* the *2007 On Healthy Development of the Corn Industrial Processing Industry* ("*Corn Processor Plan*"), at GNSAQR (March 18, 2011) at Exhibit 8, and *2006 Urgent Strengthening the Administration of Corn Deep Processing Projects,* which note overcapacity in citric acid production and which mandate the elimination of outdated citric acid operations and the reduction of citric acid development projects.

As in the *Investigation,* we do not have any government plans or other policy directives on the record that lay out objectives or goals for developing the citric acid industry *per se.* In particular, while the GOC reports that citric acid production is a light industry, that product is not specifically named in the *Light Industry Plan.* Nonetheless, the evidence on the record supports the GOC's statement.

A central guideline of the *Light Industry Plan,* which reflects general objectives from the national 11th Five Year Plan for Economic and Social Development,[4] is to "focus on promoting structural adjustment and industrial upgrading by accelerating self-directed innovation implementing technological reform, building our own brand and eliminating the backward productions." *See* GNSAQR (March 18, 2011) at Exhibit 11 (*Light Industry Plan* at Section 2.A). As a basic principle, the *Light Industry Plan* states that it will "focus on key industries" and "nurture key enterprises". *See Light Industry Plan* at 2(B)b. Under the section outlining the "main tasks" of the plan, the GOC states it will "promote technological innovation and industrialization" by establishing a "public service platform for technological innovation of key sectors" including "the technology innovation alliance of paper, fermentation, wine, sugar and leather industries." (emphasis added)

We know from the *Corn Processor Plan* that the GOC considers citric acid producers to be part of the fermentation industry. *See* GNSAQR (March 18, 2011) at Exhibit 8 (hereafter citations are to the page numbers of the English translation in Exhibit 8). The *Corn Processor Plan* includes two different tables in which citric acid is specifically referenced as one of several "fermented goods" or as part of the "fermentation" industry. *See Corn Processor Plan* at 14, "Box2"; 16, "Box3."; and 22 at item 2 of "Notes of related terms."

To accomplish the objectives of the *Light Industry Plan,* the GOC states in the "Policies and Measures" section that it will "{i}ncrease financial support," and "encourage financial institutions to increase credit support for light industry enterprises." *See Light Industry Plan* at 4(F). It will also "encourage guarantee institutions to provide credit guarantee and financing services for small and medium sized light industry enterprises and "help light industry enterprises to facilitate trade finance * * *." *Id.*

Finally, the *Light Industry Plan* states that it will "{s}trengthen guidance of industrial policy. Develop industrial policy and access condition of fermentation, grain, oil, leather, batteries, lighting appliances, household glass, plastic sheeting and others as soon as possible" and "{a}djust the '*Guiding Catalogue of Industrial Structural Adjustment'* and '*Catalogue for the Guidance of Foreign Investment Industries'* at appropriate times." The Department reviewed the 2005 edition of *Structural Adjustment Catalogue* in force during the POR and found no pre-existing specific reference to the fermentation industry. However, this section of the *Light Industry Plan* suggests that the GOC would consider adjustment of the *Structural Adjustment Catalogue* to recognize industries encouraged by that plan.[5]

In response to our request for additional "Light Industry Plans" that cover the periods *before* 2009–2011 (the period covered by the *Light Industry Plan* submitted on this record), the GOC stated that no previous light industry plans exist. Accordingly, we have examined the 2007 *Corn Processor Plan* to determine whether it lays out objectives or goals for developing the citric acid industry and calls for lending to support these objectives or goals in the period prior to 2009. We found that while the *Corn Processor Plan* clearly articulates national government support for the measured development of industrial corn processors (or the "corn deep processing industry" as it is translated), and is equally clear that citric acid producers are part of this group, the plan does not provide a mandate for lending to support these objectives. Without a directive to support the plan's objectives through credit or loans, this document does not provide a basis for finding a program of national policy lending to the citric acid industry.

Therefore, we preliminarily determine that the GOC has a policy in place to encourage and support the restructuring and updating of the fermentation industry, as one of a limited number of selected key sectors of light industry specifically identified in the *Light Industry Plan.* The *Light Industry Plan* expressly outlines a number of measures to support the fermentation industry, including the encouragement of financial institutions to provide credit. Moreover, consistent with *CFS from the PRC,* we preliminarily determine that loans from policy banks and SOCBs in the PRC constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercials loans. Finally, we preliminarily determine that the loans are *de jure* specific because of the GOC's policy, as illustrated in the *Light Industry Plan,* to encourage and support the restructuring and updating of the fermentation industry of which citric acid is a part. As the Light Industry Plan became effective in 2009, the Department will only consider loans provided on or after January 1, 2009, to be provided pursuant to the GOC's national policy lending program.

To calculate the benefit, we used the benchmarks described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by Yixing Union Co.'s total sales and Yixing Union's consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 1.65 percent *ad valorem* in 2009. We are treating RZBC's loans as having been given under the Shandong Policy Loan Program discussed next.

Shandong Province Policy Loans Program

As explained in the *Investigation,* the *Shandong Province Development Plan*

[4] *See Guidelines of the 11th Five Year Plan for Economic and Social Development at Chapter 3,* "Major Objectives of Economic and Social Development. These major objectives include "{o}ptimization and upgrading of industrial structure." *See* Memorandum To File from David Layton: Placement of Guidelines of the 11th Five Year Plan for Economic and Social Development on the Record, (May 26, 2011), attached English translation of the guidelines at 4–5.

[5] We understand that a new edition of the *Structural Adjustment Catalogue* was published in March 2011. *See* GNSASQR1, Part 1 at 6.

of Chemical Industry during "*Tenth Five-Year Plan*" *Period* ("*Shandong Province Tenth Five-Year Chemical Plan*") identifies objectives and goals for development of the citric acid industry and calls for lending to support these objectives and goals. Moreover, loan documents reviewed by the Department stated that because the food-use citric acid industry "has characteristics of capital and technology concentration and belongs to high and new technology * * * the State always takes positive policy to encourage its development." *See* Memorandum to File: Placing Government of China Verification Reports from the CVD Investigation of Citric Acid and Certain Citrate Salts from People's Republic of China into the Record of the First Administrative Review, (February 28, 2011) and attached "Government of the People's Republic of China, Anqiu City and Shandong Province Verification Report, at 8.

In this administrative review, the GOC claims that no policy loan program was in effect in Shandong Province during the POR. *See* GQR (November 15, 2010) at 8. Specifically, the GOC argues that the *Shandong Province Tenth Five-Year Chemical Plan* has been replaced by the *Shandong Province Eleventh Five-Year Petro-Chemical Plan* ("*Shandong Eleventh Five-Year Chemical Plan*"). Additionally, the GOC maintains that the *Shandong Eleventh Five-Year Chemical Plan* is not government policy because it was compiled by the Shandong Province Petro-Chemical Industry Association, which the GOC identifies as a "non-governmental organization." *Id.* at 9.

The *Shandong Eleventh Five-Year Chemical Plan* (covering the period 2006–2010) was on the *Investigation* record. Despite the fact that the period covered by the *Investigation* (2007), fell within the time span covered by the *Shandong Eleventh Five-Year Chemical Plan,* the Department concluded that actual loan documentation supported a finding of a policy lending program in Shandong Province.[6] Accordingly, the GOC has not provided us with new evidence on the record of this review that demonstrates that the Shandong Policy Loan Program has changed.

Consistent with the *Investigation,* we preliminarily determine that the Shandong Province policy loans constitute a direct financial contribution from the government under section 771(5)(D)(i) of the Act and that they provide a benefit equal to the difference between what the recipients paid on their loans and the amount they would have paid on comparable commercial loans. We also preliminarily determine that the loans are *de jure* specific because of the Government of Shandong's policy to develop the citric acid industry.

To calculate the benefit, we used the benchmarks described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). Because of the manner in which the RZBC companies reported their loans, we are not able to calculate separate rates for the periods September 19, 2008, through December 31, 2008, and January 1, 2009, through December 31, 2009, except for the loans received by RZBC Co.'s prior owners, Shandong Province High-Tech Investment Co. Ltd. ("HTI") and Sisha Co., Ltd. ("Sisha"). Therefore, we are calculating a single rate for the loans received by the RZBC companies and applying it to both years, while the loans to HTI and Sisha are being added to the rate for 2008, the year in which their ownership of RZBC Co. ended.

For loans to Sisha, we divided the benefit by the sum of Sisha's consolidated 2008 sales and the 2008 sales denominator for RZBC Co. (as described above in the "Subsidies Valuation Information" section), in accordance with 19 CFR 351.525(b)(6)(iii). For loans to HTI, we divided the benefit by the sum of HTI's 2008 consolidated sales, Sisha's 2008 consolidated sales, and the 2008 sales denominator for RZBC Co., in accordance with 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.69 percent *ad valorem* in 2008 and 0.42 percent in 2009.

B. Export Seller's Credit for High- and New-Technology Products

RZBC reported receiving loans from the Export-Import Bank of China ("EXIM") under the Export Seller's Credit Program. The supporting loan documentation for the loans shows that they were provided under EXIM's "Export Seller's Credit for High- and New Tech Products."

In the *Investigation,* the Department found that loans under this program conferred a countervailable subsidy and the GOC has responded that that there were no changes to this program during the POR. Therefore, consistent with the *Investigation,* we preliminarily determine that the loans provided by the GOC under this program constitute financial contributions under sections 771(5)(B)(i) and 771(5)(D)(i) of the Act. The loans also provide a benefit under 771(5)(E)(ii) of the Act in the amount of the difference between the amounts the recipient paid and would have paid on comparable commercial loans. Finally, the receipt of loans under this program is tied to actual or anticipated exportation or export earnings and, therefore, this program is specific pursuant to sections 771(5A)(A)–(B) of the Act.

To calculate the subsidy, we used the benchmark interest rates described in the "Benchmarks and Discount Rates" section above and the methodology described in 19 CFR 351.505(c)(1) and (2). We divided the benefit by RZBC Co's and RZBC I&E's export sales during the POR.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.82 percent *ad valorem* in 2008 and 0.82 in 2009.

C. Reduced Income Tax Rates to FIEs Based on Location

This program was created June 15, 1988, pursuant to the *Provisional Rules on Exemption and Reduction of Corporate Income Tax and Business Tax of FIEs in Coastal Economic Development Zone* issued by the Ministry of Finance. The March 18, 1988 *Circular of State Council on Enlargement of Economic Areas* enlarged the scope of the coastal economic areas and the July 1, 1991 *FIE Tax Law* continued this policy.

In the *Investigation,* the Department found that Yixing Union Co. paid a reduced tax rate under this program. Yixing Union Co.'s 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with our finding in the *Investigation,* we preliminarily determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the reduction afforded by this program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1),

[6] *Id.* at 2–7.

and divided the company's tax savings received during the POR by Yixing Union Co.'s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. paid to what it would have paid in the absence of the program (30 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.21 percent *ad valorem* under this program in 2008.

D. "Two Free, Three Half" Program

Under Article 8 of the *FIE Tax Law,* an FIE that is productive and scheduled to operate for more than 10 years may be exempted from income tax in the first two years of profitability and pay income taxes at half the standard rate for the next three years.

In the *Investigation,* the Department found that Yixing Union Co. paid a reduced tax rate under this program. Yixing Union Co.'s 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with our finding in the *Investigation,* we preliminarily determine that the reduced tax rates paid by FIEs under this program confer a countervailable subsidy. The reduced rate is a financial contribution in the form of revenue foregone by the GOC and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the company's tax savings received during the POR by Yixing UnionCo. 's sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. paid to what it would have paid in the absence of the program.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.41 percent *ad valorem* under this program in 2008.

E. Local Income Tax Exemption/Reduction Program for "Productive" FIEs

Under Article 9 of the *FIE Tax Law,* the provincial governments have the authority to exempt FIEs from the local income tax of three percent or to reduce the rate applicable to them. Yixing Union Co.'s and Cogeneration's 2007 tax returns (filed in 2008) indicate that they used this program. The program was not used by any responding company for the tax returns filed in 2009.

Consistent with prior determinations,[7] we preliminarily determine that the exemptions/reduced rates afforded to FIEs under this program confer a countervailable subsidy. The exemptions/reduced rates are a financial contribution in the form of revenue foregone by the GOC and provide a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further determine preliminarily that the exemption/reduction afforded by this program is limited as a matter of law to certain enterprises, "productive" FIEs and, hence, is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Yixing Union Co. and Cogneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings received during the POR by Yixing Union Co.'s sales during the POR, pursuant to 19 CFR 351.525(b)(6)(i), and by Yixing Union's consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the tax rate Yixing Union Co. and Cogeneration paid to what they would have paid in the absence of the program (3 percent).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.34 percent *ad valorem* under this program in 2008.

F. Reduced Income Tax Rate for Technology or Knowledge Intensive FIEs

Under Article 7.3 of the *FIE Tax Law* and Article 73 of the *Implementation Rules for the Foreign Invested Enterprise and Foreign Enterprise Income Tax Law,* FIEs located in designated areas and meeting technology-intensive and knowledge-intensive criteria could enjoy a reduced income tax rate of 15 percent. This program terminated when the *Enterprise Income Tax Law of the People's Republic of China* ("*EITL*") came into effect on January 1, 2008. However, pursuant to Article 57 of the *EITL* and the *Notice of the State Council on the Implementation of the Transitional Preferential Policies in Respect of Enterprise Income Tax* (GUOFA {2007} Number 39), enterprises that enjoyed a reduced income tax rate of 15 percent under the terminated program are permitted a five-year grace period to transition to the new *EITL* rate of 25 percent. Thus, for example, companies that faced the 15 percent rate on their 2007 tax return (filed in 2008) would pay 18 percent on their 2008 return (filed in 2009).

In the *Investigation,* the Department found that Cogeneration received benefits under this program. Cogeneration's 2007 tax return (filed in 2008) indicates that it continued to pay the reduced rate in that year. For the 2008 tax return (filed in 2009), Cogeneration paid income tax at a rate of 18 percent. We continue to find that this program provides a financial contribution in the form of revenue foregone and provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a). Further, the program is limited to enterprises located in designated geographic regions and, hence, is specific under section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by Cogeneration as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by Yixing Union's consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii). To compute the amount of the tax savings, we compared the rate Cogeneration would have paid in the absence of the program (30 percent in 2008 for the 2007 return and 25 percent in 2009 for the 2008 return).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 1.20 percent *ad valorem* under this program in 2008 and 0.18 in 2009.

G. Reduced Income Tax Rate for High or New Technology Enterprises

Article 28.2 of the *EITL* authorizes a reduced income tax rate of 15 percent for high- and new-technology enterprises ("HNTEs"). The criteria and procedures for identifying eligible

[7] *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Determination, Final Affirmative Critical Circumstances Determination,* 75 FR 57444 (September 21, 2010) ("*Seamless Pipe from the PRC*"), and accompanying Issues and Decision Memorandum ("Seamless Pipe Decision Memorandum") at 26–27; *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 59212 (September 27, 2010) ("*Certain Coated Paper from the PRC*"), and accompanying Issues and Decision Memorandum ("Certain Coated Paper Decision Memorandum") at 14–15.

HTNEs are provided in *Measures on Recognition of High and New Technology Enterprises (GUOKEFAHUO {2008} No. 172)* ("*Measures on Recognition of HNTEs*") and the *Guidance on Administration of Recognizing High and New Technology Enterprises (GUOKEFA HUO {2008} No.362).* Article 8 of the *Measures on Recognition of HNTEs* provides that the science and technology administrative departments of each province, autonomous region and municipality directly under the central government or cities under separate state planning shall collaborate with the finance and taxation departments at the same level to recognize HTNEs in their respective jurisdictions. Article 10 of the *Measures on Recognition of HNTEs* outlines the general requirements for recognition as a HNTE qualified for this tax reduction. Among these requirements, applicant enterprises must have the following: (1) Independent intellectual property of core technologies in its key products or services obtained in the past three years; (2) products that fall in the categories prescribed in the "High and New Technology Field under Key Support of the State;" (3) scientific and technical personnel with a junior college education or higher that account for 30 percent of the employees at the enterprise; (4) research and development personnel that account for at least ten percent of the employees; (5) an active research and development program aimed at substantially improving products during the past three years (the proportion of minimum R&D expenditure to sales depends on the overall size of the enterprise's sales); and (6) the percentage of total revenue represented by sales of new and high technology products must be at least 60 percent during the current year.

The annex of the *Measures on Recognition of HNTEs* lists eight high- and new-technology areas selected for the State's "primary support:" (1) Electronics and Information Technology; (2) Biology and New Medicine Technology; (3) Aerospace Industry; (4) New Materials Technology; (5) High-tech Service Industry; (6) New Energy and Energy-Saving Technology; (7) Resources and Environmental Technology; and (8) High-tech Transformation of Traditional Industries.

RZBC Co. reported that it paid the reduced income tax rate of 15 percent on its 2008 tax return (filed in 2009) under this program. The GOC contends that the eight high- and new-technology areas designated for support cover wide-ranging, diverse and non-conforming areas of the Chinese economy.

We preliminarily determine that the reduced income tax rate applied to RZBC Co. is a financial contribution in the form of revenue foregone by the GOC, and it provides a benefit to the recipient in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We also determine that the reduction afforded by this program is limited as a matter of law to certain new and high technology companies selected by the government pursuant to legal guidelines specified in *Measures on Recognition of HNTEs,* and, hence, is specific under section 771(5A)(D)(i) of the Act. Both the number of targeted industries (eight) and the narrowness of the identified project areas under those industries support a finding that the legislation expressly limits access to the program to a specific group of enterprises or industries.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. as a recurring benefit, consistent with 19 CFR 351.524(c)(1) and divided the company's tax savings received during the POR by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c). To compute the amount of the tax savings, we compared the rate RZBC Co. would have paid in the absence of the program (25 percent).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.29 percent *ad valorem* under this program in 2009.

H. Income Tax Credits on Purchases of Domestically Produced Equipment

According to the *Provisional Measures on Enterprise Income Tax Credit for Investment in Domestically Produced Equipment for Technology Renovation {Projects} (CAI SHU ZI {1999} No. 290),* a domestically invested company may claim tax credits on the purchase of domestic equipment if the project is compatible with the industrial policies of the GOC. Specifically, a tax credit up to 40 percent of the purchase price of the domestic equipment may apply to the incremental increase in tax liability from the previous year.

The GOC reported that this program terminated when the *EITL* came into effect on January 1, 2008, but pursuant to Article 57 of the *EITL,* enterprises that were previously eligible for income tax credits under this program may continue to claim the credits for five years after the *EITL's* effective date.

RZBC Co. claimed credits under this program on the 2007 and 2008 tax returns filed respectively in 2008 and 2009. RZBC Juxian claimed credits under this program on the 2008 tax return filed in 2009. No other companies used this program during the POR.

Consistent with prior determinations,[8] we preliminarily determine that income tax credits for the purchase of domestically produced equipment are countervailable subsidies. The tax credits are a financial contribution in the form of revenue foregone by the government and provide a benefit to the recipients in the amount of the tax savings. *See* section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a)(1). We further preliminarily determine that these tax credits are contingent upon use of domestic over imported goods and, hence, are specific under section 771(5A)(C) of the Act.

To calculate the benefit, we treated the income tax savings enjoyed by RZBC Co. and RZBC Juxian as a recurring benefit, consistent with 19 CFR 351.524(c)(1), and divided the companies' tax savings by RZBC Co's, RZBC I&E's, and RZBC Juxian's sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii) and 19 CFR 351.525(c).

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.20 percent *ad valorem* under this program in 2008 and 1.38 percent in 2009.

I. Value-Added Tax ("VAT") and Duty Exemptions on Imported Equipment

Enacted in 1997, the *Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37)* exempts both FIEs and certain domestic enterprises from the VAT and tariffs on imported equipment used in production so long as the equipment does not fall into prescribed lists of non-eligible items. Qualified enterprises receive a certificate either from the NDRC or its provincial branch. The objective of the program is to encourage foreign investment and to introduce foreign advanced technology equipment and industry technology upgrades. To receive the exemptions, qualified enterprises must adequately document both the product eligibility and the

[8] *See, e.g., Certain Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination,* 74 FR 64045 (December 7, 2009) ("*OCTG from the PRC*"), and accompanying Issues and Decision Memorandum ("OCTG Decision Memorandum") at 18; *see also Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 73 FR 70961 (November 24, 2008), and accompanying Issues and Decision Memorandum at 25–26.

eligibility of the imported article to the local Customs.

The GOC states that this program has been partially terminated. Pursuant to *Announcement No. 103 of the General Administration of Customs* {2008}, since January 1, 2009, enterprises importing equipment that is eligible for preferential import tax treatment under *Circular of the State Council on Adjusting Tax Policies on Imported Equipment (GUOFA No. 37)* can no longer import equipment free of VAT, though they may continue to import equipment free of duties. However the GOC reports that there is a transitional arrangement for projects that were certified under Certificate for State Encouraged Projects on or before November 19, 2008, which permits equipment related to those projects to be exempted from original VAT and customs duties provided the equipment is declared to customs on or before June 30, 2009.

RZBC Co., RZBC Juxian, Yixing Union Co. and Cogeneration received VAT and duty exemptions in various years since December 11, 2001.

In the *Investigation,* the Department found that the VAT and duty exemptions under this program conferred a countervailable subsidy. Therefore, consistent with the *Investigation,* we preliminarily determine that the VAT and duty exemptions provided by the GOC under this program constitute financial contributions in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and that they confer a benefit in the amount of the exemption (*see* 19 CFR 351.510(a)(1)). We further determine preliminarily that the VAT and duty exemptions under this program are specific under section 771(5A)(D)(i) because the program is limited to FIEs and certain domestic enterprises.

Normally, we treat exemptions from indirect taxes and import charges as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate these benefits to the year in which they were received. However, when an indirect tax or import charge exemption is provided for, or tied to, the capital structure or capital assets of a firm, the Department may treat it as a non-recurring benefit and allocate the benefit to the firm over the AUL. *See* 19 CFR 351.524(c)(2)(iii) and 19 CFR 351.524(d)(2).

Where the VAT and duty exemptions in a given year were less than 0.5 percent of the companies' sales, we expensed the exemptions in the year in which they were received, consistent with 19 CFR 351.524(a). For those years in which the VAT and duty exemptions were greater than 0.5 percent of the companies' sales for that year, we are treating the exemptions as non-recurring benefits, consistent with 19 CFR 351.524(c)(2)(iii), and allocating the benefits over the AUL.

To calculate the benefit, we used the methodology for non-recurring benefits described in 19 CFR 351.524(b). Specifically, we used the discount rate described above in the "Benchmarks and Discount Rates" section to calculate the amount of the benefit for the POR. Next, we divided the amount allocated to the POR by the relevant sales in that period. VAT and duty exemptions received by RZBC Co. and RZBC Juxian were divided by the combined sales of RZBC Co., RZBC Juxian, and RZBC I&E. The exemptions received by Cogeneration were divided by Yixing Union's consolidated sales and, the exemptions received by Yixing Union Co. were divided by Yixing Union Co.'s total sales.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008. Yixing Union's countervailable subsidies in those years were 0.74 percent and 0.29 percent, respectively.

J. Provision of Sulfuric Acid for LTAR

The Department is investigating whether the PRC government provided sulfuric acid to producers of the subject merchandise for LTAR. As discussed under "Use of Facts Otherwise Available and Adverse Inferences," above, we are preliminarily relying on AFA to determine that the producers of the sulfuric acid purchased by RZBC and Yixing Union were "authorities" within the meaning of section 771(5)(B) of the Act. Therefore, we preliminarily determine that citric acid producers have received a financial contribution from the government in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

To determine whether the government's provision of sulfuric acid conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act, we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at "Market-Based Benchmark" section.

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble:*

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble to Countervailing Duty Regulations, 63 FR 65377, (November 25, 1998) ("*Preamble*"). The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id.*

In the instant review, the GOC reported that Chinese state-controlled and collectively- controlled sulfuric acid producers accounted for 56 percent of sulfuric acid production volume in 2008 and 54 percent of domestic sulfuric acid production in 2009.[9] *See* GOC New Subsidy Allegation First Supplemental Questionnaire Response (Part 2) (May 4, 2011) ("GNSASQR1, Part 2") at 3. In addition, the GOC reports that in 2008 and 2009, respectively, Chinese domestic production accounted for 97.09 and 95.47 percent of domestic consumption of sulfuric acid. *See* GNSAQR (March 18, 2011) at 3. The fact that Chinese SOEs were responsible for such a large percentage of domestic production volume and that imports accounted for such a small share of domestic consumption, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See Preamble,* 63 FR at 65337. As further evidence of the government's involvement in the Chinese sulfuric acid market, the GOC reports that it imposed a temporary export tax on

[9] As we have explained elsewhere, these reported ownership percentages may understate the share of production accounted for by SOEs and collectives because of the GOC's method of classifying possible SOEs as FIEs. *See, e.g.,* Certain Coated Paper Decision Memorandum at 22.

sulfuric acid from February 2008 to June 2009. *See* GNSASQR1, (Part 2) (May 8, 2011) at 8. Such an export restraint can discourage exports and increase the supply of sulfuric acid in the domestic market, and possibly result in domestic prices that are lower than they would be otherwise. *See* Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) ("*Racks from the PRC*"), and accompanying Issues and Decision Memorandum ("Racks Decision Memorandum") at 15. For these reasons, we preliminarily determine that domestic prices in the PRC cannot serve as viable, tier-one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.

Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, Petitioners have placed on the record export values for sulfuric acid from Canada, the European Union, Thailand, India, and the United States in 2009 taken from trade statistics compiled by Canadian Customs, Eurostat, Thai Customs, the Department, the U.S. International Trade Commission, and Global Trade Atlas. *See* PNSA2 at 7–8 and Exhibit 18; *see also* Petitioners' Submission: Submission of Factual Information (April 15, 2011) ("Benchmark Submission") at 3 and Exhibit 4. The average of the export prices provided by the Petitioners represents an average of commercially-available world market prices for sulfuric acid that would be available to purchasers in the PRC. We note that the Department has relied on similar pricing data from export statistics in other recent CVD proceedings involving the PRC.[10] Also, 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, we have averaged the prices to calculate a single benchmark by month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we averaged the international freight rates from Canada, the European Union, Thailand, India and the United States to Shanghai, submitted by Petitioners. *See* PNSA2 at 6 and Exhibit 18, *and* Benchmark Submission at 4 and Exhibits 2 and 5. We also added inland freight in the PRC based on RZBC respondents' sulfuric acid purchase information,[11] import duties as reported by the GOC, and the VAT applicable to imports of sulfuric acid into the PRC,[12] as both RZBC and Yixing Union reported their prices to the Department inclusive of inland freight and VAT.

In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 28557 (May 21, 2010) ("*PC Strand from the PRC*"), and accompanying Issues and Decision Memorandum ("PC Strand Decision Memorandum") at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight cost from Maersk Line that is being used in these preliminary results. *See* Petitioners' Benchmark Submission at Exhibit 4.

The submitted benchmarks covered calendar year 2009. Therefore, we used the benchmark calculated for January 2009 in our calculations for 2008.

Comparing the adjusted benchmark prices to the prices paid by the respondents for their sulfuric acid, we preliminarily determine that the GOC provided sulfuric acid for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondents paid. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC has provided a list of industries that purchase sulfuric acid directly. Using the Industrial Classification for National Economic Activities published by the National Bureau of Statistics, the GOC identifies users in three major industrial categories: Mining, Manufacturing and Electric Power, Gas and Water Production and Supply. *See* GNSAQR at Exhibit 2. The three major industrial categories include 44 more specific categories, 37 of which fall under Manufacturing. These more specific product categories include such items as special chemical manufacturing and manufacture of household chemicals. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific, within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See Light-Walled Rectangular Pipe and Tube from the People's Republic of China: Final Results of the 2008–2009 Antidumping Duty Administrative Review,* 75 FR 57456 (September 21, 2010) ("*LWRP from the PRC*"), and accompanying Issues and Decision Memorandum ("LWRP Decision Memorandum") at Comment 7; *see also* Racks Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Based on the above, we preliminarily determine that the GOC conferred a countervailable subsidy on RZBC and Yixing Union through the provision of sulfuric acid for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what each respondent paid for sulfuric acid, including delivery charges, during the POR.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 4.83 percent *ad valorem* in 2008 and 0.59 percent *ad valorem* in 2009. Yixing Union's countervailable subsidies in those years were 10.05 percent and 12.17 percent, respectively.

As explained below under "Programs for Which More Information is Required," we will be requesting RZBC's and Yixing Union's purchases of sulfuric acid for the period January 2008–August 2008 in order to calculate a subsidy rate for 2008 using annual data.

K. Provision of Steam Coal for LTAR

The Department is investigating whether Chinese government provided steam coal to producers of the subject merchandise for LTAR. As discussed

[10] *See, e.g., Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination Seamless Pipe,* 75 FR 9163, 9174 (March 1, 2010); *OCTG from the PRC,* CWP Decision Memorandum at 11, and LWRP Decision Memorandum at 9.

[11] *See* RZBC Respondents' New Subsidy Allegation Supplemental Questionnaire Response (May 3, 2011) at 3–4 and Exhibits 5 and 6.

[12] *See* GNSASQR at A5.

under "Use of Facts Otherwise Available and Adverse Inferences," above, we are preliminarily relying on AFA to determine that the producers of the steam coal purchased by Cogeneration were "authorities" within the meaning of section 771(5)(B) of the Act.[13] Therefore, we preliminarily determine that citric acid producers have received a financial contribution from the government in the form of the provision of a good. *See* section 771(5)(D)(iii) of the Act.

To determine whether the government's provision of steam coal conferred a benefit within the meaning of section 771(5)(E)(iv) of the Act we relied on 19 CFR 351.511(a)(2) to identify an appropriate, market-determined benchmark for measuring the adequacy of remuneration. Potential benchmarks are listed in hierarchical order by preference: (1) Market prices from actual transactions within the country under investigation (*e.g.,* actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As we explained in *Softwood Lumber from Canada,* the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation. *See* Softwood Lumber Decision Memorandum at "Market-Based Benchmark" section.

Beginning with tier-one, we must determine whether the prices from actual sales transactions involving Chinese buyers and sellers are significantly distorted. As explained in the *Preamble:*

> Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative {tier two} in the hierarchy.

See Preamble, 63 FR 65377, (November 25, 1998). The *Preamble* further recognizes that distortion can occur when the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market. *Id.*

In the instant review, the GOC reported that Chinese wholly state-owned or state controlled coal producers accounted for 60.59 and 61.94 percent of gross industry revenue in 21008 and 2009, respectively. The GOC also reported that domestic coal production accounted for 98.47 and 96.11 percent of all domestic consumption respectively in 2008 and 2009. The fact that Chinese SOEs were responsible for such a large percentage of domestic production volume, as reflected in their share of gross industry revenue, and that imports accounted for such a small share of domestic consumption, makes it reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market. *See Preamble,* 63 FR at 65337. As further evidence of the government's involvement in the Chinese steam coal market, the GOC reported that the GOC imposed export quotas and export taxes on all types of coal, including steam coal during the POR. Such export restraints can discourage exports and increase the supply of steam coal in the domestic market, and result in domestic prices that are lower than they would be otherwise. *See, e.g.,* Racks Decision Memorandum at 15. The GOC also reported that it imposed a temporary price ceiling on steam coal for power plant use over six months of 2008, including the 3 ½ months included in the POR, which would also tend to make domestic prices lower than they would be otherwise.[14] For these reasons, we preliminarily determine that domestic prices charged by privately-owned steam coal producers based in the PRC may not serve as viable, tier-one benchmark prices. For the same reasons, we determine that import prices into the PRC cannot serve as a benchmark.

Turning to tier two benchmarks, *i.e.,* world market prices available to purchasers in the PRC, we received benchmark data from Petitioners and from Yixing Union. Petitioners submitted monthly steam coal data published by the International Monetary Fund ("IMF") for Australia and South Africa, as well as data from Platts International Coal Report, Issue 986 at 1 (August 30, 2010) ("Platts Report") for Colombia, Poland, Russia, Australia, Japan and Korea. *See* Benchmark Submission and Yixing Union Submission. These monthly benchmark data cover the entire 2009 calendar year. Yixing Union placed on the record monthly steam coal export data for Indonesia obtained from the World Trade Atlas, which covers the entire POR. Regarding the IMF and Platts price data, we note that the Department has relied on pricing data from industry publications in prior CVD proceedings involving the PRC. *See, e.g., Seamless Pipe from the PRC, OCTG from the PRC,* CWP Decision Memorandum at 11, and LWRP Decision Memorandum at 9.

Our regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Therefore, where more than one benchmark price was submitted for a given month, we averaged those prices to calculate the single benchmark price for that month. For the remaining months where only one benchmark price was on the record, we used that price for that month.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Accordingly, in deriving the benchmark prices, we ensured that ocean freight and inland freight were included. The ocean freight rates we used were an average of the freight rates submitted on the record by both Yixing Union and Petitioners. Yixing Union provided estimated ocean freight rates for steam coal from Indonesia to Guangzhou, China. *See* Yixing Union's April 15, 2011 submission ("Yixing Union April Submission") at Exhibit 7. Petitioners placed on the record ocean freight pricing data from Platts and the Baltic Exchange pertaining to shipments of steam coal from Australia to China. *See* PNSA2 at 14 and Exhibit 29. We averaged the two sets of freight rates to derive the amount included in our benchmark. For inland freight, we relied on information submitted by Petitioners and Yixing Union. Petitioners provided inland freight charges based on the transportation costs calculated from the Shanghai Deepwater Port ("SDP") to Yixing. In deriving these monthly inland freight charges, Petitioners used data collected from Haver Analytics Report, China National Bureau of Statistics, freight costs of another energy producer in China, and Google Maps. *See* Benchmark Submission at Exhibit 3. Yixing Union disputed the distance between the SDP and Yixing provided by Petitioners and submitted its own value to represent this distance. We averaged the two distances for our calculation and added the applicable VAT rate to arrive at the total inland shipping charge. We also included import duties and the VAT applicable to

[13] The RZBC companies did not purchase steam coal during the POR.

[14] *See* GNSAQR at 15.

imports of steam coal into the PRC as reported by the GOC.

In deriving the benchmark we did not include marine insurance. In prior CVD investigations involving the PRC, the Department has found that while the PRC customs authorities impute an insurance cost on certain imports for purposes of levying duties and compiling statistical data, there is no evidence to suggest that PRC customs authorities require importers to pay insurance charges. *See, e.g.,* PC Strand Decision Memorandum at Comment 13. Further, we have not added separate brokerage, handling, and documentation fees to the benchmark because we find that such costs are already reflected in the ocean freight costs submitted by Petitioners and Yixing Union.

Comparing the adjusted benchmark prices to the prices paid by Cogeneration for its steam coal, we preliminarily determine that the GOC provided steam coal for less than adequate remuneration, and that a benefit exists in the amount of the difference between the benchmark and what the respondent paid. *See* 19 CFR 351.511(a).

Finally, with respect to specificity, the third subsidy element specified under the Act, the GOC provided a list of industries that purchase steam coal directly. Using the Industrial Classification for National Economic Activities published by the National Bureau of Statistics, the GOC identifies users in the PRC that purchase steam coal directly in the six major industrial categories of Mining; Manufacturing; Electric Power, Gas and Water Production and Supply; Construction; Transport, Storage and Post; and finally Wholesale and Resale Trades, Hotels and Catering Services. Distributed among the first three major categories are 40 more specific categories including Production and Supply of Electric Power and Heat Power under the major category of Electric Power, Gas and Water Production and Supply. While numerous companies may comprise the listed industries, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Based on our review of the data and consistent with our past practice, we determine that the industries named by the GOC are limited in number and, hence, the subsidy is specific. *See* section 771(5A)(D)(iii)(I) of the Act. *See* LWRP Decision Memorandum at Comment 7; *see also* Racks Decision Memorandum at "Provision of Wire Rod for Less Than Adequate Remuneration."

Based on the above, we preliminarily determine that the GOC conferred a countervailable subsidy on Yixing Union through the provision of steam coal for less than adequate remuneration. To calculate the subsidy, we took the difference between the delivered world market price and what Cogeneration paid for steam coal, including delivery charges, during the POR.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.78 percent *ad valorem* in 2008 and 21.51 percent *ad valorem* in 2009.

As explained below under "Programs for Which More Information is Required," we will be requesting Cogeneration's purchases of steam coal for the period January 2008–August 2008 in order to calculate a subsidy rate for 2008 using annual data.

L. Land-Use Rights Extension in Yixing City

In 1996, Yixing Heat and Power Plant ("HPP") (Cogeneration's predecessor) contributed land-use rights as part of its investment in the establishment of a joint venture, Cogeneration. HPP received its shares in the company and continued to hold the land-use rights. In 2003, Cogeneration applied to the Land Resources Bureau to have the land-use rights transferred and received a granted land-use rights certificate. The certificate that was issued set the term of the land-use rights as 50-years from 2003 (*i.e.,* until 2053) rather than 50 years from 1996, the year in which the land-use rights were contributed to the joint venture.

In the *Investigation,* the Department found the additional seven years of land-use rights conferred a countervailable subsidy on Cogeneration. In this review, Yixing Union and the GOC responded that there have not been any changes in the operation of this program since it was last analyzed. *See* Cogeneration's November 8, 2011, Initial Questionnaire Response at 14, and GQR at 15. Therefore, consistent with the *Investigation,* we preliminarily determine that Cogeneration received a financial contribution in the form of revenue foregone by the GOC on the seven additional years included on the land-use rights certificates, and a benefit in the amount of the foregone revenue. *See* section 771(5)(D)(ii) of the Act. Further, because industrial land-use rights in the PRC are granted for 50 years and Cogeneration received its rights for 57 years, we preliminarily determine the additional seven years to be specific to Cogeneration within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the initial value of the land by 50 years to derive a per-year amount paid for the land-use rights. We then multiplied this amount by seven years and treated the result as the amount of the revenue foregone. In accordance with 19 CFR 351.524(b)(2), we conducted the "expense" test by dividing the grant amount by Yixing Union Co.'s and Cogeneration's total sales in 2003, and found that the benefit was greater than 0.5 percent.[15] Accordingly, we are allocating the benefit over the ten-year AUL, using the discount rate described in the "Benchmarks and Discount Rates" section above. We divided the allocated amount by Yixing Union's consolidated sales during the POR, pursuant to 19 CFR 351.525(b)(6)(iii).

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.07 percent *ad valorem* in 2008 and 0.06 percent in 2009.

Other Subsidies Received by RZBC

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: GOC—RZBC's and Yixing Union's Other Subsidies," the financial statements and tax returns submitted by the responding companies indicated that they received grants. Further, for certain of the programs, information submitted by the GOC and/or the responding companies was sufficient to analyze the programs' specificity. Where the information was not sufficient, we are employing an adverse inference and preliminarily determining the programs to be specific.

For RZBC, we identified 16 different grant programs with measurable benefits during the POR among these "other subsidies."

We preliminarily determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they providing a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Our specificity findings are described below.

M. Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products

This program was established on July 25, 2007, pursuant to the *Provisional Measures on the Fund for Optimizing Import and Export Structure of Mechanical Electronics and High and New Technology Products.* The purpose of the program is to optimize the import

[15] We note that we did not have inter-company sales between Yixing Union and Cogeneration in 2003 to subtract. However, the result would not have changed.

and export structure of high and new technology products. According to the GOC, the program is administered by the national Ministries of Finance and Commerce.

Although the GOC responded that export performance or potential is not considered, the implementing measures state, *inter alia,* that they (the measures) are being formulated "to improve the quality and benefits of exports. Also, RZBC's March 28, 2011 response states with respect to the two grants it received under this program that "the company must be an exporting company and have export products" (at first Section III, App 1). Therefore, we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the grants by RZBC Co. and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008 and a subsidy of 0.02 percent *ad valorem* in 2009.

N. International Market Development Fund Grants for Small and Medium Enterprises ("SMEs")

This program was established on October 24, 2000, pursuant to the *Measures for Administration of International Market Developing Funds of Small- and Medium-sized Enterprises (Cai Qi No. 467 of 2000)* and implemented under the *Rules for the Implementation of the Measures for Administration of International Market Developing Funds of Small- and Medium-sized Enterprises (Wai Jing Mao Ji Cai Fa (2001) No. 270).* The program provides funds for supporting the international market exploration of small- and medium-sized enterprises. According to the GOC, the program is administered by the national Ministries of Finance and Commerce.

Although the GOC responded that the export performance or potential are not considered, the establishing measures clearly include export promotion: "to encourage small- and medium-sized enterprises to join in the competition of international markets" and the funds are to be "used to help the small- and medium-sized enterprises open up the international markets." Moreover, the Department found this program to be a countervailable export subsidy in *Narrow Woven Ribbons from the PRC. See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 75 FR 41801 (July 19, 2010). Therefore, we preliminarily determine that the program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of receipt and found that the amount was less than 0.005 percent. Therefore, the subsidy yields no measurable benefit.

O. Shandong Province: Special Fund for the Establishment of Key Enterprise Technology Centers

The fund was established pursuant to *Development Guidelines of Shandong on New Type Industrialization* and *Opinion on Incubation of One Hundred Key Enterprises' Technical Centers and Improvement of their Initiatives,* with distributions occurring under the *Interim Measures on the Special Fund for the Establishment of Key Enterprise Technology Centers in Shandong Province.* It is administered by the Shandong Finance Department and the Shandong Economic and Trade Commission. The fund's purpose is to support the establishment of technical centers by key enterprises by providing funds for the purchase of equipment, training, technical cooperation and communication.

Because the fund is limited to "key enterprises," with the establishing legislation indicating there would only be 100, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(i) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's combined sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.13 percent *ad valorem* in 2008.

P. Special Fund for Pollution Control of Three Rivers, Three Lakes, and the Songhua River

This program was established pursuant to the State Council's *Comprehensive Work Plan on Energy Conservation and Emission Reduction (Guo Fa 2007 No. 7115)* and the State Council's mandate to "strengthen pollution control of Three Rivers, Three Lakes, and the Songhua River." It was implemented under the *Provisional Measure on Special Fund for Pollution Control of Three Rivers, Three Lakes and the Songhua River* promulgated by the Ministry of Finance on November 23, 2007. According to the GOC, the program is administered by the Shandong Finance Department and the Shandong Environmental Protection Bureau. The purpose of the program is to enhance pollution control efforts by financing projects affecting the Huaihe River, Haihe River, Liaohe River, Taihu Lake, Chaohu Lake, Dianchi Lake and the Songhua River.

Because the fund is limited to enterprises located in these designated areas, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iv) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.31 percent *ad valorem* in 2009.

Q. Rizhao City: Subsidies to Encourage Enterprise Expansion

According to RZBC it received grants from Rizhao City the purpose of which is to encourage enterprise expansion in order to increase tax revenues. Each grant is linked to a specific area of achievement and the approval documents name the companies that received the grants.

Because the grants were given to a limited number of enterprises, we preliminarily determine that the program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit for 2008, for RZBC Group, we divided the amount approved by the combined sales of RZBC in the year of approval and found that the amount was less than 0.5 percent. For 2008, for RZBC Co., we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. For 2009, for RZBC Co., we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.05 percent *ad valorem* in 2008 and 0.04 in 2009.

R. Rizhao City: Subsidy for Antidumping Investigations

According to RZBC, it received grants from Rizhao City due to RZBC's involvement in foreign antidumping investigations. RZBC's response indicates that in awarding the grants, the government considered whether the company made export sales and cooperated in the antidumping investigations. In its March 28, 2011 supplemental questionnaire response at Exhibit CVDS2–40, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we preliminarily determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

S. Shandong Province: Subsidy for Antidumping Investigations

As with the Rizhao City program relating to antidumping investigations, RZBC stated that that in awarding the grants, the government considered whether the company made export sales and cooperated in the antidumping investigations. In its March 28, 2011, supplemental questionnaire response at Exhibit CVDS2–24, RZBC submitted an approval document from a local authority that demonstrates this program targets firms that cooperate in antidumping investigations.

Because the grants were contingent upon exportation, we preliminarily determine that this program is specific within the meaning of section 771(5A)(B) of the Act.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's export sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

T. Subsidy for Technique Improvement

The grant approval documents describing this program are proprietary information. *See* Memorandum from Seth Isenberg to File: RZBC Preliminary Calc Memo, dated May 31, 2011, for further discussion.

To calculate the benefit, we divided the amount approved by RZBC Co.'s and RZBC I&E's relevant sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2008.

For the programs listed below, the submitted information was not sufficient to conduct a specificity analysis.

U. Fund for Energy-Saving Technological Innovation

This program was established on August 10, 2007, pursuant to the *Circular on the Issuance of Interim Measures on Financial Award Funds to Energy-saving Technological Innovation.* Under the program, enterprises whose energy-saving innovation project results in energy savings that exceed 10,000 tons of coal will receive an award. The standard award is RMB 200 per ton of coal for the eastern Chinese provinces and RMB 250 per ton of saved coal for the mid-western provinces. The purpose of the program is to encourage reduced energy consumption. According to the Circular, the program was set to terminate on December 31, 2010. The program is administered by the national Ministry of Finance and the NDRC.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.10 percent *ad valorem* in 2009.

V. Shandong Province: Award Fund for Industrialization of Key Energy-saving Technology

This program was established pursuant to the *Provisional Measures Shandong Special Fund for Energy and Water Saving,* and implemented on November 8, 2007, under the Circular of the Shandong Finance Department and Shandong Economic and Trade Commission establishing *Provisional Measures on Shandong Award Fund for Industrialization of Key Energy-saving Technology (Lu Cai Jian {2007} No. 68).* The purpose of the program is to encourage reductions in energy consumption and to accelerate the industrialization of key energy-saving technologies in Shandong Province. According to the GOC, the program is administered by the Shandong Finance Department.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.07 percent *ad valorem* in 2008.

W. *Shandong Province: Environmental Protection Industry R&D Funds*

This program was established on September 24, 2007, under the *Circular on the Issuance of Administrative Rules on Special Funds for Technology R&D Projects of the Environmental Protection Industry of Shandong Province.* It is administered by Shandong Province Finance Department and Shandong Environmental Protection Bureau. The purpose of the program is to promote pollution-preventing technologies and environmental product development, and to strengthen the innovation capability and market competitiveness of the environmental protection industry in Shandong Province.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.03 percent *ad valorem* in 2008.

X. *Rizhao City: Special Fund for Enterprise Development*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.04 percent *ad valorem* in 2009.

Y. *Rizhao City: Technological Innovation Grants*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2008.

Z. *Rizhao City: Technology Research and Development Fund*

No further descriptive information was submitted.

To calculate the benefit, we divided the amount approved by RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

AA. *Shandong Province: Waste Water Treatment Subsidies*

No further descriptive information was submitted.

To calculate the benefit, we divided the amounts approved for each year by the RZBC Co.'s, RZBC I&E's, and RZBC Juxian's sales for each the year of approval. We found that for all years but 2009, each amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that RZBC received a countervailable subsidy of 0.02 percent *ad valorem* in 2009.

Other Subsidies Received by Yixing Union

As discussed above under "Use of Facts Otherwise Available and Adverse Inferences: GOC—RZBC's and Yixing Union's Other Subsidies," the financial statements and tax returns submitted by the responding companies indicated that they received grants. Further, for certain of the programs, information submitted by the GOC and/or the responding companies was sufficient to analyze the programs' specificity. Where the information was not sufficient, we are employing an adverse inference and preliminarily determining the programs to be specific.

For Yixing Union, we identified three different grant programs with measurable benefits during the POR among these "other subsidies."

We preliminarily determine that these grants are direct transfers of funds within the meaning of section 771(5)(D)(i) of the Act and that they provide a benefit in the amount of the grant. *See* 19 CFR 351.504(a). Our specificity findings are described below.

BB. *Yixing City: Leading Enterprise Program*

According to Yixing Union, it received grants from Yixing City because it is a leading enterprise.

Because the grants were given to "leading" enterprises, we preliminarily determine that the program is specific within the meaning of section 771 (5A)(D)(iii)(I) of the Act.

To calculate the benefit, we divided the amount approved by Yixing Union Co.'s sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

CC. *Yixing City: Tai Lake Water Improvement Program*

According to Yixing Union, grants under this program are limited to companies located around Tai Lake.

Because the grants under this program are limited to enterprises located in a designated geographic area, we preliminarily determine that the programs is specific within the meaning of section 771(5)(D)(iv).

To calculate the benefit, we divided the amount approved by Yixing Union's consolidated sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.01 percent *ad valorem* in 2009.

For the program listed below, the submitted information was not sufficient to conduct a specificity analysis.

DD. *Jiangsu Province Energy Conservation and Emissions Reduction Program*

No further descriptive information was provided.

To calculate the benefit, we divided the amount approved by Yixing Union's consolidated sales in the year of approval and found that the amount was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we are allocating the total amount of the subsidy to the year of receipt.

On this basis, we preliminarily determine that Yixing Union received a countervailable subsidy of 0.05 percent *ad valorem* in 2009.

II. Programs Preliminarily Determined To Be Not Countervailable

Jiangsu Province Policy Lending

In this administrative review, the Department has re-examined an allegation made in the investigation that a program of policy lending to the citric acid exists in Jiangsu Province. As with their allegation of a national policy lending program, Petitioners contend that the GOC itself considers citric acid to be a "new biochemical product" or otherwise among food additive and fine chemical products encouraged by various plans. With regard to lending in Jiangsu Province, Petitioners claim that citric acid is among the "biochemical products" and "special fine chemicals" encouraged in the *Jiangsu Province 11th Five Year Plan—Chemical* ("*Jiangsu Chemical FYP*").

The GOC and Yixing Union deny that there is preferential lending program in Jiangsu Province that benefits citric acid producers. As discussed above regarding the national policy lending program, the GOC states that while there are no official criteria that the NDRC uses to determine what constitutes a "new biochemical product," the NDRC has indicated that citric acid "is not considered a new biochemical product because it has been in existence for years." *See* GNSASQR1, Part 1 (April 27, 2011) at 6. The GOC states that if the

NDRC expressly interprets plans in a certain way, the local authorities must follow the interpretation. However, if no NDRC interpretation exists, the GOC indicates that local officials might make their own interpretation of what is covered in plan. *Id.*

With respect to the question of how the Jiangsu provincial government classifies citric acid, we asked Yixing Union to report any product certifications it had received from either local or national governments. Yixing Union reported receiving a "High Technology Product Certificate" in 2009. *See* Supplemental Questionnaire Response of Yixing Union Biochemical Co., Ltd. and Yixing Union Cogeneration Co., Ltd. (May 16, 2011) at 1–2 and Exhibit 1. Yixing Union stated that it did not receive any benefit as a result of receiving the certificate other than the intangible benefits of improving its reputation. *Id.*

Moreover, because of possible ambiguity in the product coverage of the Jiangsu Chemical FYP, we examined closely a sample of loan documentation obtained from Yixing Union. These documents provide no indication that any of the provincial plans were a factor in awarding the loans to Yixing Union.

Accordingly, we preliminarily determine that Jiangsu Province does not provide policy loans to the citric acid industry there.

We note that beginning in 2009, we are countervailing loans received by Yixing Union based on our preliminary determination that a national policy lending program exists for the fermentation industry (*see* "National-Level Government Preferential Lending Program," above).

III. *Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR*

Regarding programs listed below, benefits from these programs result in net subsidy rates that are less than 0.005 percent *ad valorem* or constitute benefits that were fully expensed prior to the POR. Consistent with our past practice, we therefore have not included these programs in our net countervailing duty rate calculations. *See, e.g.,* CFS Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE."

A. Special Funds for Energy Saving and Recycling Program (Yixing Union) [16]
B. Water Resource Expense Reimbursement Program (Cogeneration) [17]
C. Shandong Province: Energy-Saving Award

IV. Programs Preliminarily Determined Not To Be Used[18]

A. Discounted Loans for Export-Oriented Industries
B. Loans Provided to the Northeast Revitalization Program
C. State Key Technology Renovation Project Fund
D. National Level Grants to Loss-Making SOEs
E. Income Tax Exemption Program for Export-Oriented FIEs
F. Tax Benefits to FIEs for Certain Reinvestment of Profits
G. Preferential Income Tax Rate for Research and Development at FIEs
H. Preferential Tax Programs for Encouraged Industries
I. Preferential Tax Policies for Township Enterprises
J. Reduced Income Tax Rates for Encouraged Industries in Anhui Province
K. Income Tax Exemption for FIEs Located in Jiangsu Province
L. VAT Rebate on Purchases by FIEs of Domestically Produced Equipment
M. Provincial Level Grants to Loss-Making SOEs
N. "Famous Brands" Program—Yixing City
O. Funds for Outward Expansion of Industries in Guangdong Province
P. Administration Fee Exemption in the Yixing Economic Development Zone ("YEDZ")
Q. Tax Grants, Rebates, and Credits in the YEDZ
R. Provision of Construction Services in the YEDZ for LTAR
S. Grants to FIEs for Projects in the YEDZ
T. Provision of Land in the YEDZ for LTAR
U. Provision of Electricity in the YEDZ for LTAR
V. Provision of Water in the YEDZ for LTAR
W. Provision of Land in the Zhuqiao Key Open Park for LTAR
X. Provision of Land in Anhui Province for LTAR
Y. Provision of Land to SOEs for LTAR
Z. Exemption from Land-use Fees and Provision of Land for LTAR in Jiangsu Province for LTAR
AA. Torch Program—Grant
BB. Anqui City Energy and Water Savings Grant
CC. Provision of Land in the Anqui Economic Development Zone ("AEDZ") for LTAR

V. Programs for Which More Information Is Required

In our questionnaires, we requested partial data for 2008 for the various lending programs and the sulfuric and steam coal LTAR programs. For the final results, we intend to request and analyze full-year data for 2008, consistent with the Department's practice in this regard. *See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India,* 69 FR 26549 (May 13, 2004), and accompanying Issues and Decision Memorandum at page 1, footnote 1. We will also request that Respondents report separately their interest payments for 2008 and 2009.

Further, as discussed above, the Department is investigating RZBC's creditworthiness and will be seeking information from the RZBC. The Department also intends to seek additional information regarding potential subsidies to RZBC Co.'s prior parent companies, the ownership of Cogeneration during the 2004 and 2005 calendar years, and further clarification regarding the responding companies' notes payable. Finally, for the Shandong Province: Construction Fund for Promotion of Key Industries program, RZBC reported that it received assistance from fund aimed at "key enterprises." We need additional sales information from RZBC to calculate the subsidy conferred by this program.

The Department plans to issue a post-preliminary analysis, as warranted, presenting its analysis of issues not addressed in these preliminary results.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for RZBC and Yixing Union, the producers covered by this administrative review. We preliminarily determine that the total estimated net countervailable subsidy rate for RZBC for 2008 is 6.96 percent *ad valorem* and for 2009 is 4.04 percent *ad valorem.* We preliminarily determine that the total estimated net countervailable subsidy rate for Yixing Union for 2008 is 13.80 percent *ad valorem* and for 2009 is 35.93 percent *ad valorem.*

If these preliminary results are adopted in our final results of this review, 15 days after publication of the final results of this review the Department will instruct CBP to liquidate shipments of citric acid by RZBC and Yixing Union entered or

[16] Yixing SQR1 at 9 and Exhibit SS–8.

[17] Yixing SQR1 at 10 and Exhibit SS–14.

[18] In this section we refer to programs preliminarily determined to be not used by the two participating respondent companies.

withdrawn from warehouse, for consumption from September 19, 2008, through Jan 16, 2009, and May 29, 2009, through December 31, 2009, at the applicable rates. Entries during the period January 17, through May 29, 2009, were not suspended for CVD purposes due to the termination of provisional measures.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts calculated for year 2009. For all non-reviewed firms, we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Unless otherwise specified, the hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14027 Filed 6–6–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–978]

High Pressure Steel Cylinders From the People's Republic of China; Initiation of Countervailing Duty Investigation

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

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Holland and Yasmin Nair, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–1279 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 11, 2011, the Department of Commerce ("Department") received a countervailing duty ("CVD") petition concerning imports of high pressure steel cylinders ("steel cylinders") from the People's Republic of China ("PRC") filed in proper form by Norris Cylinder Company ("Petitioner"). *See* The Petitions for the Imposition of Antidumping and Countervailing Duties Against High Pressure Steel Cylinders from the People's Republic of China, dated May 11, 2011 ("the Petition"). On May 17, 2011, the Department issued requests to Petitioner for additional information and for clarification of certain areas of the CVD Petition. Based on the Department's requests, Petitioner filed a supplement to the Petition regarding general issues on May 20, 2011 ("Supplement to the AD/CVD Petitions").

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended ("Act"), Petitioner alleges that producers/exporters of steel cylinders from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, and threaten further material injury to, an industry in the United States.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because Petitioner is an interested party, as defined in section 771(9)(C) of the Act, and has demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate (*see* "Determination of Industry Support for the Petition" below).

Period of Investigation

The period of investigation is January 1, 2010, through December 31, 2010.

Scope of Investigation

The products covered by the scope of this investigation are steel cylinders from the PRC. For a full description of the scope of the investigation, *see* the "Scope of the Investigation," in Appendix I of this notice.

Comments on Scope of the Investigation

During our review of the Petition, we discussed the scope with Petitioner to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the "Scope of Investigation" language has been modified from the language in the Petition to reflect these clarifications. *See* Memorandum to the File from Meredith A.W. Rutherford regarding Petitions for the Imposition of Antidumping Duties and Countervailing Duties on High Pressure Steel Cylinders from the People's Republic of China; Conference Call with Petitioner, May 24, 2011.

Moreover, as discussed in the preamble to the regulations (*see Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997)), we are setting aside a period of time for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by Monday, June 20, 2011, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty investigation as well as the PRC CVD investigation. Comments should be addressed to Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and to consult with parties prior to the issuance of the preliminary determination.

Consultations

Pursuant to section 702(b)(4)(A)(ii) of the Act, on May 16, 2011, the Department invited representatives of the Government of the PRC ("GOC") for consultations with respect to the CVD petition. On May 25, 2011, the Department held consultations with representatives of the GOC via conference call. *See* Ex-Parte Memorandum on Consultations regarding the Petition for Imposition of Countervailing Duties on High Pressure

Steel Cylinders from the People's Republic of China, dated May 27, 2011.

Determination of Industry Support for the Petition

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the "industry" as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989)). Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation" (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation.

Based on our analysis of the information submitted on the record, we have determined that steel cylinders constitute a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* Countervailing Duty Investigation Initiation Checklist: High Pressure Steel Cylinders from the People's Republic of China ("Initiation Checklist"), at Attachment II, Analysis of Industry Support for the Petitions Covering High Pressure Steel Cylinders from the People's Republic of China, dated concurrently with this notice and on file in the CRU.

In determining whether Petitioner has standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the "Scope of Investigation" section in Appendix I of this notice. To establish industry support, Petitioner provided its production of the domestic like product in 2010. *See* Supplement to the AD/CVD Petitions, at 4. Petitioner maintains that it was the sole remaining producer of the domestic like product in 2010 and, therefore, alleges that it represents the total production of the domestic like product. *See* Volume I of the Petition, at 3, and Supplement to the AD/CVD Petitions, at 4. To demonstrate that it was the sole producer, Petitioner provided an affidavit from the President of Norris Cylinder Company, who has many years of professional experience in the steel cylinders industry. *See* Supplement to the AD/CVD Petitions, at 4, and Exhibit III–64. We have relied upon data Petitioner provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

Our review of the data provided in the Petition, supplemental submissions, and other information readily available to the Department indicates that Petitioner has established industry support. First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, we find that the Department is not required to take further action in order to evaluate industry support (*e.g.,* polling). *See* Section 702(c)(4)(D) of the Act, and Initiation Checklist at Attachment II. Second, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II. Finally, we find that the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

The Department finds that Petitioner filed the Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act and it has demonstrated sufficient industry support with respect to the CVD investigation that it is requesting the Department initiate. For further discussion, *see* Initiation Checklist at Attachment II.

Injury Test

Because the PRC is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

Petitioner alleges that imports of steel cylinders from the PRC are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the domestic industry producing steel cylinders. In addition, Petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioner contends that the industry's injured condition is illustrated by reduced market share, reduced shipments, reduced capacity,

underselling and price depression or suppression, reduced employment, a decline in financial performance, lost sales and revenue, and an increase in import penetration. *See* Volume I of the Petition, at 11–22. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist at Attachment III, Injury.

Initiation of Countervailing Duty Investigation

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the Petition on steel cylinders from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of steel cylinders in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. State-Owned Enterprise ("SOE") Programs

1. Preferential Loans for SOEs.
2. Loan and Interest Forgiveness for SOEs.
3. Provision of Land and/or Land Use Rights to SOEs at Less than Adequate Remuneration.

B. Grant Programs

1. The State Key Technology Renovation Project Fund.
2. Circular on Issuance of Management Methods for Foreign Trade Development Support Fund.
3. Rebates for Export and Credit Insurance Fees.
4. GOC and Sub-Central Grants, Loans, and Other Incentives for Development of Famous Brands and China World Top Brands.

C. Loans and Directed Credit

1. Preferential Lending to Steel Product Producers under the Ninth Five-Year Plan.
2. Treasury Bond Loans.
3. Preferential Lending to Steel Cylinders Producers and Exporters Classified as "Honorable Enterprises".

D. Income Tax Programs

1. "Two Free, Three Half" Program for FIEs.
2. Income Tax Reductions for Export-oriented FIEs.
3. Preferential Tax Programs for FIEs that are Engaged in Research and Development.
4. Income Tax Reduction for FIEs that Re-Invest Profits in Export-oriented Enterprises.
5. Local Income Tax Exemption and Reduction Programs for "Productive" FIEs.
6. Income Tax Credits for Domestically-Owned Companies Purchasing Domestically-Produced Equipment.

E. Other Tax Programs

1. Import Tariff and VAT Exemptions for FIEs and Certain Domestic Enterprises Using Imported Equipment in Encouraged Industries.
2. VAT Refunds for FIEs Purchasing Domestically-Produced Equipment.
3. VAT Exemptions for Central Region.

F. Government Provision of Goods or Services for Less Than Adequate Remuneration ("LTAR")

1. Hot-Rolled Steel.
2. Seamless Tube Steel.
3. Welded Tube Steel.
4. Standard Commodity Steel Billets and Blooms.
5. High-Quality Chromium Molybdenum Alloy Steel Billets and Blooms.
6. Electricity.

G. Subsidies to Steel Cylinders Producers Located in Economic Development Zones

1. Subsidies Provided in the Tianjin Binhai New Area and the Tianjin Economic and Technological Development Area.

Respondent Selection

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of investigation. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

Distribution of Copies of the Petition

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GC. Because of the particularly large number of producers/exporters identified in the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

ITC Notification

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition is filed, whether there is a reasonable indication that imports of subsidized steel cylinders from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 703(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Attachment I

Scope of the Investigation

The merchandise covered by the scope of the investigation is seamless steel cylinders designed for storage or transport of compressed or liquefied gas ("high pressure steel cylinders"). High pressure steel cylinders are fabricated of chrome alloy steel including, but not limited to, chromium-molybdenum steel or chromium magnesium steel, and have permanently impressed into the steel, either before or after importation, the symbol of a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration ("DOT")-approved high pressure steel cylinder manufacturer, as well as an approved DOT type marking of DOT 3A,

3AX, 3AA, 3AAX, 3B, 3E, 3HT, 3T, or DOT–E (followed by a specific exemption number) in accordance with the requirements of sections 178.36 through 178.68 of Title 49 of the Code of Federal Regulations, or any subsequent amendments thereof. High pressure steel cylinders covered by the investigation have a water capacity up to 450 liters, and a gas capacity ranging from 8 to 702 cubic feet, regardless of corresponding service pressure levels and regardless of physical dimensions, finish or coatings.

Excluded from the scope of the investigation are high pressure steel cylinders manufactured to UN–ISO–9809–1 and 2 specifications and permanently impressed with ISO or UN symbols. Also excluded from the investigation are acetylene cylinders, with or without internal porous mass, and permanently impressed with 8A or 8AL in accordance with DOT regulations.

Merchandise covered by the investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under subheading 7311.00.00.30. Subject merchandise may also enter under HTSUS subheadings 7311.00.00.60 or 7311.00.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the investigation is dispositive.

[FR Doc. 2011–14042 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–974]

Certain Steel Wheels From the People's Republic of China; Notice of Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Robert Copyak, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* 202–482–4793 and 202–482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2011, the Department of Commerce (the Department) initiated the countervailing duty investigation of certain steel wheels from the People's Republic of China. *See Certain Steel Wheels From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 23302 (April 26, 2011). Currently, the preliminary determination is due no later than June 23, 2011.

Postponement of Due Date for Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, if the Department concludes that the parties concerned in the investigation are cooperating and determines that the investigation is extraordinarily complicated, section 703(c)(1)(B) of the Act allows the Department to postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation.

The Department has determined that the parties involved in the proceeding are cooperating and that the investigation is extraordinarily complicated. *See* section 703(c)(1)(B) of the Act. Specifically, the Department is currently investigating alleged subsidy programs involving loans, grants, income tax incentives, and the provision of goods or services for less than adequate remuneration. Due to the number and complexity of the alleged countervailable subsidy practices being investigated, it is not practicable to complete the preliminary determination of this investigation within the original time limit (*i.e.,* by June 23, 2011). Therefore, in accordance with section 703(c)(1)(B) of the Act, we are fully extending the due date for the preliminary determination to no later than 130 days after the day on which the investigation was initiated. However, as that date falls on a Saturday (*i.e.,* August 27, 2011), the deadline for completion of the preliminary determination is now Monday, August 29, 2011, the next business day.

This notice is issued and published pursuant to section 703(c)(2) of the Act.

Dated: June 1, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14169 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–976]

Galvanized Steel Wire From the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation

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

FOR FURTHER INFORMATION CONTACT: David Lindgren or Nicholas Czajkowski, 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) 482–3870 and (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2011, the Department of Commerce (the Department) initiated the countervailing duty investigation of galvanized steel wire from the People's Republic of China. *See Galvanized Steel Wire From the People's Republic of China: Initiation of Countervailing Duty Investigation,* 76 FR 23564 (April 27, 2011). Currently, the preliminary determination is due no later than June 24, 2011.

Postponement of Due Date for the Preliminary Determination

Section 703(b)(1) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary determination in a countervailing duty investigation within 65 days after the date on which the Department initiated the investigation. However, the Department may postpone making the preliminary determination until no later than 130 days after the date on which the administering authority initiated the investigation if, among other reasons, the petitioner makes a timely request for an extension pursuant to section 703(c)(1)(A) of the Act. In the instant investigation, Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC, and Oklahoma Steel & Wire Company, Inc. (collectively, Petitioners), made a timely request on May 25, 2011, requesting a postponement of the preliminary countervailing duty determination to 130 days from the initiation date. *See* 19 CFR 351.205(b)(2), 19 CFR 351.205(e) and the Petitioners' May 25, 2011, letter requesting postponement of the preliminary determination, which is

available in the Central Records Unit, Room 7046 in the Department's main building.

The Department finds no compelling reason to deny the request. Therefore, pursuant to section 703(c)(1)(A) of the Act, we are extending the due date for the preliminary determination to no later than 130 days after the date on which this investigation was initiated, *i.e.,* to August 28, 2011. However, August 28, 2011, falls on a Sunday. It is the Department's long-standing practice to make a determination on the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. *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). Accordingly, the Department will make its preliminary determination on August 29, 2011, the first business day after August 28, 2011.

This notice is issued and published pursuant to section 703(c)(2) of the Act and 19 CFR 351.205(f)(l).

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14028 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–807]

Sulfanilic Acid From India; Final Results of Expedited Sunset Review of Countervailing Duty Order

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

SUMMARY: On April 1, 2011, the Department of Commerce ("the Department") initiated the third sunset review of the countervailing duty ("CVD") order on sulfanilic acid from India pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of a domestic interested party and an inadequate response (in this case, no response) from respondent interested parties, the Department conducted an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated the "Final Results of Review" section of this notice.

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Eric Greynolds, 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) 482–6071.

SUPPLEMENTAL INFORMATION:

Background

On April 1, 2011, the Department initiated the third sunset review of the CVD order on sulfanilic acid from India pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 76 FR 18163 (April 1, 2011). The Department received a notice of intent to participate on behalf of National Ford Chemical Company ("NFC"), within the deadline specified in 19 CFR 351.218(d)(1)(i). NFC claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of sulfanilic acid.

The Department received an adequate substantive response from NFC within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from the Government of India or any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of the order.

Scope of the Order

The merchandise covered by the CVD order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

In response to a request from 3V Corporation, on May 5, 1999, the Department determined that sodium sulfanilate processed in Italy from sulfanilic acid produced in India is within the scope of the order. *See Notice of Scope Rulings and Anticircumvention Inquiries,* 65 FR 41957 (July 7, 2000).

The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 2921.42.22 and 2921.42.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum ("Decision Memorandum") from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the accompanying Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy if the order was revoked, the net countervailable subsidy likely to prevail, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

Producers/exporters	Net countervailable subsidy (percent)
All Manufacturers/Producers/Exporters	43.71

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of 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 the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–14187 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an Opportunity To Apply for Membership on the Manufacturing Council.

SUMMARY: The Department of Commerce is currently seeking applications to fill two vacant positions on the Manufacturing Council (Council). The purpose of the Council is to advise the Secretary of Commerce on matters relating to the competitiveness of the U.S. manufacturing sector and to provide a forum for regular communication between Government and the manufacturing sector.

ADDRESSES: Please submit application information via e-mail to *jennifer.pilat@trade.gov* or by mail to Jennifer Pilat, Office of Advisory Committees, Manufacturing Council Executive Secretariat, U.S. Department of Commerce, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230.

DATES: All applications must be received by the Office of Advisory Committees by close of business on June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer Pilat, Manufacturing Council Executive Secretariat, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: jennifer.pilat@trade.gov.*

SUPPLEMENTARY INFORMATION: The Office of Advisory Committees is accepting applications for two vacant positions on the Council for the current two-year charter term that began April 8, 2010. The member shall serve until the Council's charter expires on April 8, 2012. The member will be selected, in accordance with applicable Department of Commerce guidelines, based on his or her ability to advise the Secretary of Commerce on matters relating to the U.S. manufacturing sector, to act as a liaison among the stakeholders represented by the membership and to provide a forum for those stakeholders on current and emerging issues in the manufacturing sector. The Council's membership shall reflect the diversity of American manufacturing by representing a balanced cross-section of the U.S. manufacturing industry in terms of industry sectors, geographic locations, demographics, and company size, particularly seeking the representation of small- and medium-sized enterprises. Based on the diversity of the manufacturing industry currently represented on the Council for this charter term, the Department is particularly encouraging applicants from the high-tech or bio-tech manufacturing and alternative energy manufacturing sectors. Additional factors that may be considered in the selection of these Council members include the candidate's proven experience in promoting, developing and marketing programs in support of manufacturing industries, in job creation in the manufacturing sector, and the candidate's proven abilities to manage manufacturing organizations. Given the duties and objectives of the Council, the Department particularly seeks applicants who are active manufacturing executives (Chief Executive Officer, President, or a comparable level of responsibility) and who are leaders within their local manufacturing communities and industries.

Each Council member serves as the representative of a U.S. entity in the manufacturing sector. For the purposes of eligibility, a U.S. entity is defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities.

Appointments to the Council will be made by the Secretary of Commerce. All Council members serve at the discretion of the Secretary of Commerce. Council members shall serve in a representative capacity, representing the views and interests of their particular subsector within the manufacturing sector. Council members are not Special Government Employees.

Council members receive no compensation for their participation in Council activities. Members participating in Council meetings and events are responsible for their travel, living and other personal expenses. Meetings are held regularly and not less than annually, usually in Washington, DC. Members are required to attend a majority of the Council's meetings. The current Council last met on April 7, 2011 in Washington, DC. The next meeting is scheduled to take place in July 2011 in Oregon.

To be considered for membership, please provide the following:

1. Name and title of the individual requesting consideration. A sponsor letter from the applicant on his or her entity's letterhead or, if the applicant is to represent an entity other than his or her employer, a letter from the entity to be represented, containing a brief statement of why the applicant should be considered for membership on the Council. This sponsor letter should also address the applicant's manufacturing-related experience, including any manufacturing trade policy experience.
2. The applicant's personal resume.
3. An affirmative statement that the applicant meets all eligibility criteria.
4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.
5. An affirmative statement that the applicant is not a federally registered lobbyist, and that the applicant understands that, if appointed, the applicant will not be allowed to continue to serve as a Council member if the applicant becomes a federally registered lobbyist.
6. Information regarding the control of the entity to be represented, including the governing structure and stock holdings, as appropriate, signifying compliance with the criteria set forth above.

7. The entity's size and ownership, product or service line and major markets in which the entity operates.

8. Please include all relevant contact information such as mailing address, fax, e-mail, phone number, and support staff information where relevant.

Dated: June 2, 2011

Jennifer Pilat,

Executive Secretary, The Manufacturing Council.

[FR Doc. 2011–14053 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

National Advisory Council on Minority Business Enterprises; Meeting

AGENCY: Minority Business Development Agency, U.S. Department of Commerce.

ACTION: Notice of an Open Meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its second meeting to discuss the work of selected subcommittees and deliverables to fulfill the NACMBE's charter mandate.

DATES: The meeting will be held on Friday, June 24, 2011, from 9 to 11 a.m., and from 2:30 p.m. to 4:15 p.m. Central Standard Time (CST).

ADDRESSES: This meeting will be held at the Intercontinental Hotel, 2222 West Loop South, Houston, Texas 77027, Chairman Boardroom.

FOR FURTHER INFORMATION CONTACT: Demetria Gallagher, National Directors Office, Minority Business Development Agency, U.S. Department of Commerce at (202) 482–1624; *e-mail: dgallagher@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with consensus advice from the private sector on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace.

Topics to be considered:

1. Discussion of Subcommittee topics.
2. Reports from Subcommittees.
3. Public comment period.

Public Participation: The meeting is open to the public. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Demetria Gallagher at the contact information above by 5 p.m. EST on Thursday, June 16, 2011, to preregister. Please specify any requests for reasonable accommodation at least five (5) business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 3:30 p.m.—4 p.m. will be available for pertinent brief oral comments from members of the public attending the meeting. Any member of the public may submit pertinent written comments concerning the NACMBE's affairs at *http://www.mbda.gov/main/nacmbe-submit-comments.* To be considered during the meeting, comments must be received no later than 5 p.m. EST on Wednesday, June 15, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Demetria Gallagher, at (202) 482–1624, or *dgallagher@ mbda.gov,* at least five (5) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: June 2, 2011.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2011–14189 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA466

Endangered Species; File No. 15135

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Blake Price, 132 Conch Court, Emerald Isle, NC 28594, has been issued a permit to take threatened and endangered sea turtles for purposes scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Amy Hapeman, (301) 713–2289.

SUPPLEMENTARY INFORMATION: On March 12, 2010, notice was published in the **Federal Register** (75 FR 11863) that a request for a scientific research permit to take sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes tests of modified large mesh (> 5 inches) commercial gillnets targeting southern flounder *(Paralichthys lethostigma)* in shallow waters of Core Sound, North Carolina. The objective of the research is to determine if gear modifications can eliminate or reduce sea turtle bycatch. Two contracted commercial gillnet vessels will conduct a total of 60 fishing trips, setting five matched (control vs. experimental) sets of gillnets each day. Each matched set would consist of 100 yards of control net (gillnet without illuminated lights) and 100 yards of experimental net (gillnet with illuminated lights), for a total of 1,000 yards of net a day. With the exception of illuminated, green Lindgen-Pitman Electralume lights, the gillnets will be identical in all other respects (*e.g.,* twine material/size; hanging ration; stretch mesh). Turtles will be identified to species, measured, photographed, and flipper and passive integrated transponder tagged before released beyond the fishing area. Any comatose or debilitated turtles will be transported to a rehabilitation center. The permit authorizes capture of 18 Kemp's ridley (*Lepidochelys kempii*), 15 loggerhead (*Caretta caretta*), 31 green (*Chelonia mydas*), 2 hawksbill (*Eretmochelys imbricata*), and 2 leatherback (*Dermochelys coriacea*) sea turtles over the life of the permit. Of the captured turtles, 5 Kemp's ridleys, 5 loggerheads, 15 greens, 2 hawksbills, and 2 leatherbacks may be mortalities. The permit is valid through December 31, 2012.

Issuance of this permit, as required by the ESA, was based on a finding that

such permit (1) Was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: June 1, 2011.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–14134 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA430]

Takes of Marine Mammals Incidental to Specified Activities; Marine Geophysical Survey in the Central-Western Bering Sea, August 2011

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

ACTION: Notice; proposed Incidental Harassment Authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Geological Survey (USGS) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to conducting a marine geophysical survey in the central-western Bering Sea, August 2011. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS requests comments on its proposal to issue an IHA to USGS to incidentally harass, by Level B harassment only, 12 species of marine mammals during the specified activity.

DATES: Comments and information must be received no later than July 8, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Hopper@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

The U.S. Geological Survey (USGS), which is providing funding for the proposed action, has prepared a draft "Environmental Assessment (EA) of a Marine Geophysical Survey by the R/V MARCUS G. LANGSETH in the Central-Western Bering Sea, August 2011," prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of USGS, which is also available at the same internet address. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper or Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and requirements pertaining to the mitigation, monitoring and reporting of such takings. NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

NMFS received an application on April 8, 2011, from USGS for the taking by harassment, of marine mammals, incidental to conducting a marine geophysical survey in the central-western Bering Sea within the U.S. Exclusive Economic Zone (EEZ) and adjacent international waters in depths greater than 3,000 m (9,842 ft). USGS plans to conduct the proposed survey from approximately August 7 to September 1, 2011.

USGS plans to use one source vessel, the R/V MARCUS G. LANGSETH (LANGSETH) and a seismic airgun array to collect seismic reflection and refraction profiles to be used to delineate the U.S. Extended Continental Shelf (ECS) in the Bering Sea. In addition to the proposed operations of the seismic airgun array, USGS intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey.

Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the

principal means of marine mammal taking associated with these activities and USGS has requested an authorization to take 12 species of marine mammals by Level B harassment. Take is not expected to result from the use of the MBES or SBP, for reasons discussed in this notice; nor is take expected to result from collision with the vessel because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey, for a relatively short period of time (approximately 25 days). It is likely that any marine mammal would be able to avoid the vessel.

Description of the Specified Activity

USGS's proposed seismic survey in the central-western Bering Sea is between approximately 350 to 800 kilometers (km) (189 to 432 nautical miles [nmi]) offshore in the area 55 to 58.5° North, 177° West to 175° East (see Figure 1 of the IHA application). Water depths in the survey area are greater than 3,000 m (9,842 ft). The project is scheduled to occur from approximately August 7 to September 1, 2011. Some minor deviation from these dates is possible, depending on logistics and weather.

The proposed seismic survey will collect seismic reflection and refraction profiles to be used to delineate the U.S. ECS in the Bering Sea. The ECS is the region beyond 200 nmi where a nation can show that it satisfies the conditions of Article 76 of the United Nations Convention on the Law of the Sea. One of the conditions in Article 76 is a function of sediment thickness. The seismic profiles are designed to identify the stratigraphic "basement" and to map the thickness of the overlying sediments. Acoustic velocities (required to convert measured travel times to true depth) will be measured directly using sonobuoys and ocean-bottom seismometers (OBSs), as well as by analysis of hydrophone streamer data. Acoustic velocity refers to the velocity of sound through sediments or crust.

The survey will involve one source vessel, the LANGSETH. The LANGSETH will deploy an array of 36 airguns as an energy source. The receiving system will consist of one 8 km (4.3 nmi) long hydrophone streamer and/or five OBSs. As the airgun is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. The OBSs record the returning acoustic signals internally for later analysis.

The planned seismic survey (*e.g.,* equipment testing, startup, line changes, repeat coverage of any areas, and equipment recovery) will consist of approximately 2,420 km (1,306.7 nmi) of transect lines in the central-western Bering Sea survey area (see Figure 1 of the IHA application). The array will be powered-down to one 40 in ^{3} airgun during turns. All of the survey will take place in water deeper than 1,000 m (3,280.8 ft). A multi-channel seismic (MCS) survey using the hydrophone streamer will take place along 14 MCS profile lines and 3 OBS lines. Following the MCS survey, 18 OBSs will be deployed and a refraction survey will take place along three of the 14 lines. If time permits, an additional 525 km (283.5 nmi) contingency line will be added to the MCS survey. In addition to the operations of the airgun array, a Kongsberg EM 122 MBES and Knudsen 320B SBP will also be operated from the LANGSETH continuously throughout the cruise. There will be additional seismic operations associated with equipment testing, start-up, and possible line changes or repeat coverage of any areas where initial data quality is sub-standard. In USGS's calculations, 25% has been added for those additional operations.

All planned geophysical data acquisition activities will be conducted by Lamont-Doherty Earth Observatory (L–DEO), the LANGSETH's operator, with on-board assistance by the scientists who have proposed the study. The Principal Investigators are Drs. Jonathan R. Childs and Ginger Barth of the USGS. The vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Vessel Specifications

The LANGSETH, owned by the National Science Foundation, will tow the 36 airgun array, as well as the hydrophone streamer, along predetermined lines. The LANGSETH will also deploy and retrieve the OBSs. When the LANGSETH is towing the airgun array and the hydrophone streamer, the turning rate of the vessel is limited to five degrees per minute. Thus, the maneuverability of the vessel is limited during operations with the streamer.

The vessel has a length of 71.5 m (235 ft); a beam of 17.0 m (56 ft); a maximum draft of 5.9 m (19 ft); and a gross tonnage of 3,834. The LANGSETH was designed as a seismic research vessel with a propulsion system designed to be as quiet as possible to avoid interference with the seismic signals emanating from the airgun array. The ship is powered by two 3,550 horsepower (hp) Bergen BRG–6 diesel engines which drive two propellers directly. Each propeller has four blades and the shaft typically rotates at 750 revolutions per minute. The vessel also has an 800 hp bowthruster, which is not used during seismic acquisition. The LANGSETH's operation speed during seismic acquisition is typically 7.4 to 9.3 km per hour (hr) (km/hr) (4 to 5 knots [kts]). When not towing seismic survey gear, the LANGSETH typically cruises at 18.5 km/hr (10 kts). The LANGSETH has a range of 25,000 km (13,499 nmi) (the distance the vessel can travel without refueling).

The vessel also has an observation tower from which protected species visual observers (PSVO) will watch for marine mammals before and during the proposed airgun operations. When stationed on the observation platform, the PSVO's eye level will be approximately 21.5 m (71 ft) above sea level providing the PSVO an unobstructed view around the entire vessel.

Acoustic Source Specifications

Seismic Airguns

The LANGSETH will deploy a 36 airgun array, with a total volume of approximately 6,600 cubic inches (in ^{3}). The airgun array will consist of a mixture of Bolt 1500LL and Bolt 1900LLX airguns ranging in size from 40 to 360 in ^{3}, with a firing pressure of 1,900 pounds per square inch. The airguns will be configured as four identical linear arrays or "strings." Each string will have 10 airguns, the first and last airguns in the strings are spaced 16 m (52 ft) apart. Of the 10 airguns, nine airguns in each string will be fired simultaneously, whereas the tenth is kept in reserve as a spare, to be turned on in case of failure of another airgun. The four airgun strings will be distributed across an area of approximately 24x16 m (78.7x52.5 ft) behind the LANGSETH and will be towed approximately 100 m (328 ft) behind the vessel. The shot interval will be 50 m (164 ft) or approximately 22 seconds (s) for the MCS survey and 150 m (492.1 ft) or approximately 66 s for the OBS refraction survey. The firing pressure of the array is 1,900 pounds per square inch (psi). During firing, a brief (approximately 0.1 s) pulse sound is emitted. The airguns will be silent during the intervening periods. The dominant frequency components range from two to 188 Hertz (Hz).

The tow depth of the array will be 9 m (29.5 ft) during OBS refraction and MCS surveys. Because the actual source is a distributed sound source (36 airguns) rather than a single point source, the highest sound measurable at

any location in the water will be less than the nominal source level. In addition, the effective source level for sound propagating in near-horizontal directions will be substantially lower than the nominal source level applicable to downward propagation because of the directional nature of the sound from the airgun array.

Metrics Used in This Document

This section includes a brief explanation of the sound measurements frequently used in the discussions of acoustic effects in this document. Sound pressure is the sound force per unit area, and is usually measured in micropascals (μPa), where 1 pascal (Pa) is the pressure resulting from a force of one newton exerted over an area of one square meter. Sound pressure level (SPL) is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 μPa, and the units for SPLs are dB re: 1 μPa. SPL (in decibels [dB]) = 20 log (pressure/reference pressure).

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak (p-p), or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square unless otherwise noted. SPL does not take the duration of a sound into account.

Characteristics of the Airgun Pulses

Airguns function by venting high-pressure air into the water which creates an air bubble. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by the oscillation of the resulting air bubble. The oscillation of the air bubble transmits sounds downward through the seafloor and the amount of sound transmitted in the near horizontal directions is reduced. However, the airgun array also emits sounds that travel horizontally toward non-target areas.

The nominal source levels of the airgun arrays used by USGS on the LANGSETH are 236 to 265 dB re 1 μPa (p-p) and the rms value for a given airgun pulse is typically 16 dB re 1 μPa lower than the peak-to-peak value. However, the difference between rms and peak or peak-to-peak values for a given pulse depends on the frequency content and duration of the pulse, among other factors.

Accordingly, L–DEO has predicted the received sound levels in relation to distance and direction from the 36 airgun array and the single Bolt 1900LL 40 in^3 airgun, which will be used during power-downs. A detailed description of L–DEO's modeling for marine seismic source arrays for species mitigation is provided in Appendix A of USGS's application. These are the nominal source levels applicable to downward propagation. The effective source levels for horizontal propagation are lower than those for downward propagation when the source consists of numerous airguns spaced apart from one another.

Appendix B of USGS's EA discusses the characteristics of the airgun pulses and marine mammals. NMFS refers the reviewers to the application and EA documents for additional information.

Predicted Sound Levels for the Airguns

Tolstoy *et al.,* (2009) reported results for propagation measurements of pulses from the LANGSETH's 36 airgun, 6,600 in^3 array in shallow-water (approximately 50 m [164 ft]) and deep-water depths (approximately 1,600 m [5,249 ft]) in the Gulf of Mexico in 2007 and 2008. L–DEO has used these reported empirical values to determine exclusion zones (EZs) for the 36 airgun array and the single airgun; to designate mitigation zones, and to estimate take for marine mammals.

Results of the Gulf of Mexico calibration study (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. The empirical data for deep water (greater than 1,000 m; 3,280 ft) indicated that the L–DEO model (as applied to the LANGSETH's 36 airgun array) overestimated the received sound levels at a given distance.

Using the corrected measurements (array) or model (single airgun), Table 1 (below) shows the distances at which three rms sound levels are expected to be received from the 36 airgun array and a single airgun. The 180 and 190 dB re 1 μPa (rms) distances are the safety criteria as specified by NMFS (2000) and are applicable to cetaceans and pinnipeds, respectively. If marine mammals are detected within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down, if necessary) immediately.

Table 1 (below) summarizes the predicted distances at which sound levels (160, 180, and 190 dB [rms]) are expected to be received from the 36 airgun array and a single airgun operating in deep water depths.

TABLE 1—MEASURED (ARRAY) OR PREDICTED (SINGLE AIRGUN) DISTANCES TO WHICH SOUND LEVELS ≥ 190, 180, AND 160 dB RE: 1 μPa (RMS) COULD BE RECEIVED IN WATER DEPTHS >1,000 m DURING THE PROPOSED SURVEY IN THE CENTRAL-WESTERN BERING SEA, AUGUST 7 TO SEPTEMBER 1, 2011

Source and volume	Water depth	Predicted RMS distances (m)		
		190 dB	180 dB	160 dB
Single Bolt airgun (40 in^3)	Deep > 1,000 m	12	40	385
4 Strings 36 airguns (6,600 in^3)	Deep > 1,000 m	400	940	3,850

Along with the airgun operations, two additional acoustical data acquisition systems will be operated during the survey. The ocean floor will be mapped with the Kongsberg EM 122 MBES and a Knudsen 320B SBP. These sound sources will be operated continuously from the LANGSETH throughout the cruise.

MBES

The LANGSETH will operate a Kongsberg EM 122 MBES concurrently during airgun operations to map characteristics of the ocean floor. The hull-mounted MBES emits brief pulses of sound (also called a ping) (10.5 to 13, usually 12 kHz) in a fan-shaped beam that extends downward and to the sides of the ship. The transmitting beamwidth is 1° or 2° fore-aft and 150° athwartship and the maximum source level is 242 dB re: 1 μPa.

For deep-water operations, each ping consists of eight (in water greater than 1,000 m) or four (less than 1,000 m) successive, fan-shaped transmissions, each ensonifying a sector that extends 1° fore-aft. Continuous-wave pulses

increase from 2 to 15 milliseconds (ms) long in water depths up to 2,600 m (8,530.2 ft), and FM chirp pulses up to 100 ms long are used in water greater than 2,600 m. The successive transmissions span an overall cross-track angular extent of about 150°, with 2 ms gaps between the pulses for successive sectors.

SBP

The LANGSETH will also operate a Knudsen 320B SBP continuously throughout the cruise simultaneously with the MBES to map and provide information about the sedimentary features and bottom topography. The beam is transmitted as a 27° cone, which is directed downward by a 3.5 kHz transducer in the hull of the LANGSETH. The maximum output is 1,000 watts (204 dB re 1 μPa), but in practice, the output varies with water depth. The pulse interval is one second, but a common mode of operation is to broadcast five pulses at one second intervals followed by a five second pause.

NMFS expects that acoustic stimuli resulting from the proposed operation of the single airgun or the 36 airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. NMFS does not expect that the movement of the LANGSETH, during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4.6 knots [kts]; 8.5 km/hr; 5.3 mph) during seismic acquisition.

Description of the Proposed Dates, Duration, and Specified Geographic Region

The survey will occur in the central-western Bering Sea, between approximately 350 and 800 km offshore, in the area 55 to 58.5° North, 177° West to 175° East. The seismic survey will take place in water depths greater than 3,000 m. The exact dates of the activities depend on logistics and weather conditions. The LANGSETH will depart from Dutch Harbor, Alaska on August 7, 2011, and return there on September 1, 2011. Seismic operations will be carried out for an estimated 20 days.

Description of the Marine Mammals in the Area of the Proposed Specified Activity

Twenty marine mammal species under NMFS jurisdiction (14 cetacean and 6 pinniped) are known to or could occur in the central-western Bering Sea. Several of these species are listed as endangered under the U.S. Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*), including the North Pacific right whale (*Eubalaena japonica*), bowhead (*Balaena mysticetus*), humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales, as well as the western stock of Steller sea lions (*Eumetopias jubatus*). The eastern stock of Steller sea lions is listed as threatened.

The marine mammals that occur in the proposed survey area belong to three taxonomic groups: Odontocetes (toothed cetaceans, such as dolphins), mysticetes (baleen whales), and pinnipeds (seals, sea lions, and walrus). Cetaceans and pinnipeds are the subject of the IHA application to NMFS. Walrus sightings are rare in the Bering Sea during the summer. The Pacific walrus is managed by the U.S. Fish and Wildlife Service (USFWS) and will not be considered further in this analysis; all others are managed by NMFS. Of the 20 species of marine mammals that could occur in the offshore waters of the central-western Bering Sea, six are seasonally common during summer (humpback, minke, fin, and killer whales, Dall's porpoises, and ribbon seals). The other 14 species are uncommon to extremely rare. For example, the migratory patterns of bowhead whales from the Bering to the Beaufort Sea in spring make it unlikely that these whales would be encountered during the proposed seismic surveys. Because of their small population size, right whale sightings are rare and generally restricted to an area approximately 500 km from the proposed survey site. Blue whales are also low in abundance, and five NMFS vessel-based surveys between 1999 and 2010 along the Bering shelf and slope have not reported a single blue whale sighting. Cuvier's beaked whales and Pacific white-sided dolphins are typically not found in high-latitude polar waters and would be considered very rare in the vicinity of the proposed seismic survey. Among the pinnipeds, the two species of ice seals (ringed and spotted seals) are not common in the Bering Sea in late summer. In addition, coastal cetacean species (gray whales) likely would not be encountered in the deep, offshore waters of the survey area. Although not considered common to the area, takes were requested for the remaining six species (sei whale, sperm whale, Baird's beaked whale, Stejneger's beaked whale, Steller sea lion, and northern fur seal) because they have been reported in deep water in the Bering Sea.

Table 2 (below) presents information on the abundance, distribution, population status, conservation status, and density of the marine mammals that may occur in the proposed survey area during August 2011.

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Table 2. The habitat, regional abundance, and conservation status of marine mammals that may occur in or near the proposed seismic survey areas in the central-western Bering Sea. [See text and Tables 2 to 4 in USGS's application and EA for further details.]

Species	Sumer occurrence, Bering Sea	Habitat	Abundance estimates for stocks	ESA[1]	MMPA[2]	Density (#/1,000 km^2) Best[3] | Max[4]	
Mysticetes							
North Pacific right whale (Eubalaena japonica)	Rare	Coastal, shelf	Low hundreds[5]	EN	D	0	0
Bowhead whale (Balaena mysticetus)	Uncommon	Pack ice, coastal	12,631[6]	EN	D		
Gray whale (Eschrichtius robustus)	Common	Coastal, shallow shelf	NW Pacific: 19,126 NE Pacific: ~100[7]	DL/E[8]	NC D (Western populati	N.A.	N.A.
Humpback whale (Megaptera novaeangliae)	Common	Offshore, nearshore in winter	20,808[9]	EN	D	2.15	6.53
Minke whale (Balaenoptera acutorostrata)	Common	Nearshore, offshore, ice	25,000[10]	NL	NC	0	0
Sei whale (Balaenoptera borealis)	Uncommon	Offshore, shelf	7,260 – 12,620[11]	EN	D	0	0
Fin whale (Balaenoptera physalus)	Common	Offshore, deep water	13,620-18,680[12]	EN	D	2.40	5.93
Blue whale (Balaneoptera musculus)	Rare	Offshore, shelf, coastal	3,500[13]	EN	D	0	0
Odontocetes							
Sperm whale (Physeter macrocephalus)	Common	Offshore	24,000[14]	EN	D	0.31	1.69
Cuvier's beaked whale (Ziphius cavirostris)	Very rare	Offshore	20,000[15]	NL	NC	1.29	1.81
Baird's beaked whale (Berardius bairdii)	Uncommon	Offshore	6,000[16]	NL	NC	0.40	0.60

Species	Sumer occurrence, Bering Sea	Habitat	Abundance estimates for stocks	ESA [1]	MMPA [2]	Density (#/1,000 km^2) Best [3]	Max [4]
Stejneger's beaked whale (Mesoplodon stejnegeri)	Uncommon	Offshore	N.A.	NL	NC	0	0
Pacific white-sided dolphin (Lagenorhynchus obliquidens)	Rare	Pelagic, shelf, coastal	988,000[17]	NL	NC	N.A.	N.A.
Killer whale (Orcinus orca)	Common	Pelagic, shelf, coastal	8,500[18]	NL	NC	3.13	7.73
Dall's porpoise (Phocoenoides dalli)	Common	Nearshore, offshore	1,186,000[19]	NL	NC	19.97	62.50
Pinnipeds							
Northern fur seal (Callorhinus ursinus)	Common	Offshore and coastal	1.1 million[20]	NL	D	105.90	158.85
Steller sea lion (Eumetopias jubatus)	Common	Coastal	58,334-72,223[21] 42,366[22]	T[23] EN[23]	D	9.80	14.70
Spotted seal (Phoca largha)	Uncommon	Ice	AK: ~59,214[24]	NL	NC	N.A.	N.A.
Ringed seal (Pusa hispida)	Uncommon	Ice, landfast, pack	AK: 249,000[24]	NL	NC	N.A.	N.A.
Ribbon seal (Histriophoca fasciata)	Rare	Ice	Bering Sea: 90,000-100,000[24]	NL	NC	0	0

N.A. Not available or not assessed.
[1] U.S. Endangered Species Act: EN = Endangered, T = Threatened, NL = Not listed.
[2] U.S. Marine Mammal Protection Act: D = Depleted, NC = Not Classified.
[3] Best density estimate as listed in Table 3 of the application.
[4] Maximum density estimate as listed in Table 3 of the application.
[5] Western population (Brownell *et al*., 2001)
[6] Based on 2003-2005 surveys (Koski *et al*. 2010).
[7] Northwest (NW) Pacific (Allen and Angliss, 2010); Northeast (NE) Pacific (Reilly *et al*., 2008).
[8] The western (Northeast Pacific) subpopulation is listed as Endangered.
[9] North Pacific Ocean (Barlow *et al*., 2009).
[10] Northwest Pacific (Buckland *et al*., 1992; IWC, 2009).
[11] North Pacific (Tillman, 1977).
[12] North Pacific (Ohsumi and Wada, 1974).
[13] Eastern North Pacific (NMFS, 1998).
[14] Eastern temperate North Pacific (Whitehead, 2002b).
[15] Eastern Tropical Pacific (Wade and Gerrodette, 1993).
[16] Western North Pacific (Reeves and Leatherwood, 1994; Kasuya, 2002).
[17] North Pacific Ocean (Miyashita, 1993b).
[18]
[19] North Pacific Ocean and Bering Sea (Houck and Jefferson, 1999)
[20] North Pacific (Gelatt and Lowry, 2008).
[21] Eastern U.S. Stock (Allen and Angliss, 2010).
[22] Western U.S. Stock (Allen and Angliss, 2010).
[23] Eastern stock is listed as threatened, and the western stock is listed as endangered.
[24] Burns 1981.

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Refer to Section III of USGS's application for detailed information regarding the abundance and distribution, population status, and life

history and behavior of these species and their occurrence in the proposed project area. The application also presents how USGS calculated the estimated densities for the marine mammals in the proposed survey area. NMFS has reviewed these data and determined them to be the best available scientific information for the purposes of the proposed IHA.

Potential Effects on Marine Mammals

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the proposed survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007).

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the proposed project would result in any cases of temporary or permanent hearing impairment, or any significant non-auditory physical or physiological effects. Based on the available data and studies described here, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

Tolerance to Sound

Studies on marine mammals' tolerance to sound in the natural environment are relatively rare. Richardson *et al.* (1995) defines tolerance as the occurrence of marine mammals in areas where they are exposed to human activities or man-made noise. In many cases, tolerance develops by the animal habituating to the stimulus (*i.e.,* the gradual waning of responses to a repeated or ongoing stimulus) (Richardson, *et al.,* 1995; Thorpe, 1963), but because of ecological or physiological requirements, many marine animals may need to remain in areas where they are exposed to chronic stimuli (Richardson, *et al.,* 1995).

Numerous studies have shown that pulsed sounds from airguns are often readily detectable in the water at distances of many kilometers. Malme *et al.,* (1985) studied the responses of humpback whales on their summer feeding grounds in southeast Alaska to seismic pulses from a airgun with a total volume of 100 in^3. They noted that the whales did not exhibit persistent avoidance when exposed to the airgun and concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 µPa.

Weir (2008) observed marine mammal responses to seismic pulses from a 24 airgun array firing a total volume of either 5,085 in^3 or 3,147 in^3 in Angolan waters between August 2004 and May 2005. She recorded a total of 207 sightings of humpback whales (n = 66), sperm whales (n = 124), and Atlantic spotted dolphins (n = 17) and reported that there were no significant differences in encounter rates (sightings/hr) for humpback and sperm whales according to the airgun array's operational status (*i.e.,* active versus silent).

Masking of Natural Sounds

The term masking refers to the inability of a subject to recognize the occurrence of an acoustic stimulus as a result of the interference of another acoustic stimulus (Clark *et al.,* 2009). Introduced underwater sound may, through masking, reduce the effective communication distance of a marine mammal species if the frequency of the source is close to that used as a signal by the marine mammal, and if the anthropogenic sound is present for a significant fraction of the time (Richardson *et al.,* 1995).

Masking effects of pulsed sounds (even from large arrays of airguns) on marine mammal calls and other natural sounds are expected to be limited. Because of the intermittent nature and low duty cycle of seismic airgun pulses, animals can emit and receive sounds in the relatively quiet intervals between pulses. However, in some situations, reverberation occurs for much or the entire interval between pulses (*e.g.,* Simard *et al.,* 2005; Clark and Gagnon, 2006), which could mask calls. Some baleen and toothed whales are known to continue calling in the presence of seismic pulses, and their calls can usually be heard between the seismic pulses (*e.g.,* Richardson *et al.,* 1986; McDonald *et al.,* 1995; Greene *et al.,* 1999; Nieukirk *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a,b, 2006; and Dunn and Hernandez, 2009). However, Clark and Gagnon (2006) reported that fin whales in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area. Similarly, there has been one report that sperm whales ceased calling when exposed to pulses from a very distant seismic ship (Bowles *et al.,* 1994). However, more recent studies found that they continued calling in the presence of seismic pulses (Madsen *et al.,* 2002; Tyack *et al.,* 2003; Smultea *et al.,* 2004; Holst *et al.,* 2006; and Jochens *et al.,* 2008). Dolphins and porpoises commonly are heard calling while airguns are operating (*e.g.,* Gordon *et al.,* 2004; Smultea *et al.,* 2004; Holst *et al.,* 2005a, b; and Potter *et al.,* 2007). The sounds important to small odontocetes are predominantly at much higher frequencies than are the dominant components of airgun sounds, thus limiting the potential for masking.

In general, NMFS expects the masking effects of seismic pulses to be minor, given the normally intermittent nature of seismic pulses. Refer to Appendix B (4) of USGS's EA for a more detailed discussion of masking effects on marine mammals.

Behavioral Disturbance

Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.,* 1995; Wartzok *et al.,* 2004; Southall *et al.,* 2007; Weilgart, 2007). If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007). Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, it is common practice to estimate how many mammals would be present within a particular distance of industrial activities and/or exposed to a particular level of industrial sound. In most cases, this approach likely overestimates the numbers of marine mammals that would be affected in some biologically-important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based primarily on behavioral observations of a few species. Scientists have conducted detailed studies on humpback, gray, bowhead (*Balaena mysticetus*), and sperm whales. Less detailed data are available for some other species of baleen whales, small

toothed whales, and sea otters, but for many species there are no data on responses to marine seismic surveys.

Baleen Whales—Baleen whales generally tend to avoid operating airguns, but avoidance radii are quite variable (reviewed in Richardson *et al.,* 1995). Whales are often reported to show no overt reactions to pulses from large arrays of airguns at distances beyond a few kms, even though the airgun pulses remain well above ambient noise levels out to much longer distances. However, as reviewed in Appendix B (5) of USGS's EA, baleen whales exposed to strong noise pulses from airguns often react by deviating from their normal migration route and/or interrupting their feeding and moving away. In the cases of migrating gray and bowhead whales, the observed changes in behavior appeared to be of little or no biological consequence to the animals (Richardson, *et al.,* 1995). They simply avoided the sound source by displacing their migration route to varying degrees, but within the natural boundaries of the migration corridors.

Studies of gray, bowhead, and humpback whales have shown that seismic pulses with received levels of 160 to 170 dB re 1 μPa (rms) seem to cause obvious avoidance behavior in a substantial fraction of the animals exposed (Malme *et al.,* 1986, 1988; Richardson *et al.,* 1995). In many areas, seismic pulses from large arrays of airguns diminish to those levels at distances ranging from four to 15 km from the source. A substantial proportion of the baleen whales within those distances may show avoidance or other strong behavioral reactions to the airgun array. Subtle behavioral changes sometimes become evident at somewhat lower received levels, and studies summarized in Appendix B (5) of USGS's EA have shown that some species of baleen whales, notably bowhead and humpback whales, at times, show strong avoidance at received levels lower than 160 to 170 dB re 1 μPa (rms).

McCauley *et al.* (1998, 2000a) studied the responses of humpback whales off western Australia to a full-scale seismic survey with a 16 airgun array (2,678 in ^{3}) and to a single airgun (20 in ^{3}) with source level of 227 dB re 1 μPa (p-p). In the 1998 study, they documented that avoidance reactions began at five to eight km from the array, and that those reactions kept most pods approximately three to four km from the operating seismic boat. In the 2000 study, they noted localized displacement during migration of four to five km by traveling pods and seven to 12 km by more sensitive resting pods of cow-calf pairs. Avoidance distances with respect to the single airgun were smaller but consistent with the results from the full array in terms of the received sound levels. The mean received level for initial avoidance of an approaching airgun was 140 dB re 1 μPa for humpback pods containing females, and at the mean closest point of approach distance the received level was 143 dB re 1 μPa. The initial avoidance response generally occurred at distances of five to eight km from the airgun array and two km from the single airgun. However, some individual humpback whales, especially males, approached within distances of 100 to 400 m (328 to 1,312 ft), where the maximum received level was 179 dB re 1 μPa.

Humpback whales on their summer feeding grounds in southeast Alaska did not exhibit persistent avoidance when exposed to seismic pulses from a 1.64–L (100 in^3) airgun (Malme *et al.,* 1985). Some humpbacks seemed "startled" at received levels of 150 to 169 dB re 1 μPa. Malme *et al.* (1985) concluded that there was no clear evidence of avoidance, despite the possibility of subtle effects, at received levels up to 172 dB re 1 μPa (rms).

Studies have suggested that south Atlantic humpback whales wintering off Brazil may be displaced or even strand upon exposure to seismic surveys (Engel *et al.,* 2004). The evidence for this was circumstantial and subject to alternative explanations (IAGC, 2004). Also, the evidence was not consistent with subsequent results from the same area of Brazil (Parente *et al.,* 2006), or with direct studies of humpbacks exposed to seismic surveys in other areas and seasons. After allowance for data from subsequent years, there was no observable direct correlation between strandings and seismic surveys (IWC, 2007:236).

There are no data on reactions of right whales to seismic surveys, but results from the closely-related bowhead whale show that their responsiveness can be quite variable depending on their activity (migrating versus feeding). Bowhead whales migrating west across the Alaskan Beaufort Sea in autumn, in particular, are unusually responsive, with substantial avoidance occurring out to distances of 20 to 30 km from a medium-sized airgun source at received sound levels of around 120 to 130 dB re 1 μPa (Miller *et al.,* 1999; Richardson *et al.,* 1999; see Appendix B (5) of USGS's EA). However, more recent research on bowhead whales (Miller *et al.,* 2005; Harris *et al.,* 2007) corroborates earlier evidence that, during the summer feeding season, bowheads are not as sensitive to seismic sources. Nonetheless, subtle but statistically significant changes in surfacing–respiration–dive cycles were evident upon statistical analysis (Richardson *et al.,* 1986). In the summer, bowheads typically begin to show avoidance reactions at received levels of about 152 to 178 dB re 1 μPa (Richardson *et al.,* 1986, 1995; Ljungblad *et al.,* 1988; Miller *et al.,* 2005).

Reactions of migrating and feeding (but not wintering) gray whales to seismic surveys have been studied. Malme *et al.* (1986, 1988) studied the responses of feeding eastern Pacific gray whales to pulses from a single 100 in^3 airgun off St. Lawrence Island in the northern Bering Sea. They estimated, based on small sample sizes, that 50 percent of feeding gray whales stopped feeding at an average received pressure level of 173 dB re 1 μPa on an (approximate) rms basis, and that 10 percent of feeding whales interrupted feeding at received levels of 163 dB re 1 μPa. Those findings were generally consistent with the results of experiments conducted on larger numbers of gray whales that were migrating along the California coast (Malme *et al.,* 1984; Malme and Miles, 1985), and western Pacific gray whales feeding off Sakhalin Island, Russia (Wursig *et al.,* 1999; Gailey *et al.,* 2007; Johnson *et al.,* 2007; Yazvenko *et al.,* 2007a, b), along with data on gray whales off British Columbia (Bain and Williams, 2006).

Various species of *Balaenoptera* (blue, sei, fin, and minke whales) have occasionally been seen in areas ensonified by airgun pulses (Stone, 2003; MacLean and Haley, 2004; Stone and Tasker, 2006), and calls from blue and fin whales have been localized in areas with airgun operations (*e.g.,* McDonald *et al.,* 1995; Dunn and Hernandez, 2009). Sightings by observers on seismic vessels off the United Kingdom from 1997 to 2000 suggest that, during times of good sightability, sighting rates for mysticetes (mainly fin and sei whales) were similar when large arrays of airguns were shooting vs. silent (Stone, 2003; Stone and Tasker, 2006). However, these whales tended to exhibit localized avoidance, remaining significantly further (on average) from the airgun array during seismic operations compared with non-seismic periods (Stone and Tasker, 2006). In a study off of Nova Scotia, Moulton and Miller (2005) found little difference in sighting rates (after accounting for water depth) and initial sighting distances of balaenopterid whales when airguns were operating vs. silent. However, there were indications that these whales

were more likely to be moving away when seen during airgun operations. Similarly, ship-based monitoring studies of blue, fin, sei and minke whales offshore of Newfoundland (Orphan Basin and Laurentian Sub-basin) found no more than small differences in sighting rates and swim directions during seismic versus non-seismic periods (Moulton *et al.,* 2005, 2006a,b).

Data on short-term reactions by cetaceans to impulsive noises are not necessarily indicative of long-term or biologically significant effects. It is not known whether impulsive sounds affect reproductive rate or distribution and habitat use in subsequent days or years. However, gray whales have continued to migrate annually along the west coast of North America with substantial increases in the population over recent years, despite intermittent seismic exploration (and much ship traffic) in that area for decades (Appendix A in Malme *et al.,* 1984; Richardson *et al.,* 1995; Allen and Angliss, 2010). The western Pacific gray whale population did not seem affected by a seismic survey in its feeding ground during a previous year (Johnson *et al.,* 2007). Similarly, bowhead whales have continued to travel to the eastern Beaufort Sea each summer, and their numbers have increased notably, despite seismic exploration in their summer and autumn range for many years (Richardson *et al.,* 1987; Allen and Angliss, 2010).

Toothed Whales—Little systematic information is available about reactions of toothed whales to noise pulses. Few studies similar to the more extensive baleen whale/seismic pulse work summarized above and (in more detail) in Appendix B of USGS's EA have been reported for toothed whales. However, there are recent systematic studies on sperm whales (*e.g.,* Gordon *et al.,* 2006; Madsen *et al.,* 2006; Winsor and Mate, 2006; Jochens *et al.,* 2008; Miller *et al.,* 2009). There is an increasing amount of information about responses of various odontocetes to seismic surveys based on monitoring studies (*e.g.,* Stone, 2003; Smultea *et al.,* 2004; Moulton and Miller, 2005; Bain and Williams, 2006; Holst *et al.,* 2006; Stone and Tasker, 2006; Potter *et al.,* 2007; Hauser *et al.,* 2008; Holst and Smultea, 2008; Weir, 2008; Barkaszi *et al.,* 2009; Richardson *et al.,* 2009).

Seismic operators and marine mammal observers on seismic vessels regularly see dolphins and other small toothed whales near operating airgun arrays, but in general there is a tendency for most delphinids to show some avoidance of operating seismic vessels (*e.g.,* Goold, 1996a,b,c; Calambokidis and Osmek, 1998; Stone, 2003; Moulton and Miller, 2005; Holst *et al.,* 2006; Stone and Tasker, 2006; Weir, 2008; Richardson *et al.,* 2009; see also Barkaszi *et al.,* 2009). Some dolphins seem to be attracted to the seismic vessel and floats, and some ride the bow wave of the seismic vessel even when large arrays of airguns are firing (*e.g.,* Moulton and Miller, 2005). Nonetheless, small toothed whales more often tend to head away, or to maintain a somewhat greater distance from the vessel, when a large array of airguns is operating than when it is silent (*e.g.,* Stone and Tasker, 2006; Weir, 2008). In most cases, the avoidance radii for delphinids appear to be small, on the order of one km less, and some individuals show no apparent avoidance. The beluga whale (*Delphinapterus leucas*) is a species that (at least at times) shows long-distance avoidance of seismic vessels. Aerial surveys conducted in the southeastern Beaufort Sea during summer found that sighting rates of beluga whales were significantly lower at distances 10 to 20 km compared with 20 to 30 km from an operating airgun array, and observers on seismic boats in that area rarely see belugas (Miller *et al.,* 2005; Harris *et al.,* 2007).

Captive bottlenose dolphins (*Tursiops truncatus*) and beluga whales exhibited changes in behavior when exposed to strong pulsed sounds similar in duration to those typically used in seismic surveys (Finneran *et al.,* 2000, 2002, 2005). However, the animals tolerated high received levels of sound before exhibiting aversive behaviors.

Results for porpoises depend on species. The limited available data suggest that harbor porpoises show stronger avoidance of seismic operations than do Dall's porpoises (Stone, 2003; MacLean and Koski, 2005; Bain and Williams, 2006; Stone and Tasker, 2006). Dall's porpoises seem relatively tolerant of airgun operations (MacLean and Koski, 2005; Bain and Williams, 2006), although they too have been observed to avoid large arrays of operating airguns (Calambokidis and Osmek, 1998; Bain and Williams, 2006). This apparent difference in responsiveness of these two porpoise species is consistent with their relative responsiveness to boat traffic and some other acoustic sources (Richardson *et al.,* 1995; Southall *et al.,* 2007).

Most studies of sperm whales exposed to airgun sounds indicate that the sperm whale shows considerable tolerance of airgun pulses (*e.g.,* Stone, 2003; Moulton *et al.,* 2005, 2006a; Stone and Tasker, 2006; Weir, 2008). In most cases the whales do not show strong avoidance, and they continue to call (see Appendix B of USGS's EA for review). However, controlled exposure experiments in the Gulf of Mexico indicate that foraging behavior was altered upon exposure to airgun sound (Jochens *et al.,* 2008; Miller *et al.,* 2009; Tyack, 2009).

There are almost no specific data on the behavioral reactions of beaked whales to seismic surveys. However, some northern bottlenose whales (*Hyperoodon ampullatus*) remained in the general area and continued to produce high-frequency clicks when exposed to sound pulses from distant seismic surveys (Gosselin and Lawson, 2004; Laurinolli and Cochrane, 2005; Simard *et al.,* 2005). Most beaked whales tend to avoid approaching vessels of other types (*e.g.,* Wursig *et al.,* 1998). They may also dive for an extended period when approached by a vessel (*e.g.,* Kasuya, 1986), although it is uncertain how much longer such dives may be as compared to dives by undisturbed beaked whales, which also are often quite long (Baird *et al.,* 2006; Tyack *et al.,* 2006). Based on a single observation, Aguilar-Soto *et al.* (2006) suggested that foraging efficiency of Cuvier's beaked whales may be reduced by close approach of vessels. In any event, it is likely that most beaked whales would also show strong avoidance of an approaching seismic vessel, although this has not been documented explicitly.

There are increasing indications that some beaked whales tend to strand when naval exercises involving mid-frequency sonar operation are ongoing nearby (*e.g.,* Simmonds and Lopez-Jurado, 1991; Frantzis, 1998; NOAA and USN, 2001; Jepson *et al.,* 2003; Hildebrand, 2005; Barlow and Gisiner, 2006; see also the Stranding and Mortality section in this notice). These strandings are apparently a disturbance response, although auditory or other injuries or other physiological effects may also be involved. Whether beaked whales would ever react similarly to seismic surveys is unknown. Seismic survey sounds are quite different from those of the sonar in operation during the above-cited incidents.

Odontocete reactions to large arrays of airguns are variable and, at least for delphinids and Dall's porpoises, seem to be confined to a smaller radius than has been observed for the more responsive of the mysticetes, belugas, and harbor porpoises (Appendix B of USGS's EA).

Pinnipeds—Pinnipeds are not likely to show a strong avoidance reaction to the airgun array. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds,

and only slight (if any) changes in behavior, see Appendix B of USGS's EA. In the Beaufort Sea, some ringed seals avoided an area of 100 m to (at most) a few hundred meters around seismic vessels, but many seals remained within 100 to 200 m (328 to 656 ft) of the trackline as the operating airgun array passed by (*e.g.,* Harris *et al.,* 2001; Moulton and Lawson, 2002; Miller *et al.,* 2005). Ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not, but the difference was small (Moulton and Lawson, 2002). Similarly, in Puget Sound, sighting distances for harbor seals and California sea lions tended to be larger when airguns were operating (Calambokidis and Osmek, 1998). Previous telemetry work suggests that avoidance and other behavioral reactions may be stronger than evident to date from visual studies (Thompson *et al.,* 1998).

Hearing Impairment and Other Physical Effects

Exposure to high intensity sound for a sufficient duration may result in auditory effects such as a noise-induced threshold shift—an increase in the auditory threshold after exposure to noise (Finneran, Carder, Schlundt, and Ridgway, 2005). Factors that influence the amount of threshold shift include the amplitude, duration, frequency content, temporal pattern, and energy distribution of noise exposure. The magnitude of hearing threshold shift normally decreases over time following cessation of the noise exposure. The amount of threshold shift just after exposure is called the initial threshold shift. If the threshold shift eventually returns to zero (*i.e.,* the threshold returns to the pre-exposure value), it is called temporary threshold shift (TTS) (Southall *et al.,* 2007).

Researchers have studied TTS in certain captive odontocetes and pinnipeds exposed to strong sounds (reviewed in Southall *et al.,* 2007). However, there has been no specific documentation of TTS let alone permanent hearing damage, *i.e.,* permanent threshold shift (PTS), in free-ranging marine mammals exposed to sequences of airgun pulses during realistic field conditions.

Temporary Threshold Shift—TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends. Few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals, and none of the published data concern TTS elicited by exposure to multiple pulses of sound. Available data on TTS in marine mammals are summarized in Southall *et al.* (2007). Table 1 (above) presents the distances from the LANGSETH's airguns at which the received energy level (per pulse, flat-weighted) would be expected to be greater than or equal to 180 dB re 1 µPa (rms).

To avoid the potential for injury, NMFS (1995, 2000) concluded that cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 µPa (rms). NMFS believes that to avoid the potential for permanent physiological damage (Level A harassment), cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 µPa (rms). The 180 dB level is a shutdown criterion applicable to cetaceans, as specified by NMFS (2000); these levels were used to establish the EZs. NMFS also assumes that cetaceans exposed to levels exceeding 160 dB re 1 µPa (rms) may experience Level B harassment.

Researchers have derived TTS information for odontocetes from studies on the bottlenose dolphin and beluga. For the one harbor porpoise tested, the received level of airgun sound that elicited onset of TTS was lower (Lucke *et al.,* 2009). If these results from a single animal are representative, it is inappropriate to assume that onset of TTS occurs at similar received levels in all odontocetes (*cf.* Southall *et al.,* 2007). Some cetaceans apparently can incur TTS at considerably lower sound exposures than are necessary to elicit TTS in the beluga or bottlenose dolphin.

For baleen whales, there are no data, direct or indirect, on levels or properties of sound that are required to induce TTS. The frequencies to which baleen whales are most sensitive are assumed to be lower than those to which odontocetes are most sensitive, and natural background noise levels at those low frequencies tend to be higher. As a result, auditory thresholds of baleen whales within their frequency band of best hearing are believed to be higher (less sensitive) than are those of odontocetes at their best frequencies (Clark and Ellison, 2004). From this, it is suspected that received levels causing TTS onset may also be higher in baleen whales (Southall *et al.,* 2007). For this proposed study, USGS expects no cases of TTS given: (1) The low abundance of baleen whales in the planned study area at the time of the survey; and (2) the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for TTS to occur.

In pinnipeds, TTS thresholds associated with exposure to brief pulses (single or multiple) of underwater sound have not been measured. Initial evidence from more prolonged (non-pulse) exposures suggested that some pinnipeds (harbor seals in particular) incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.,* 1999, 2005; Ketten *et al.,* 2001). The TTS threshold for pulsed sounds has been indirectly estimated as being an SEL of approximately 171 dB re 1 $\mu Pa^2 \cdot s$ (Southall *et al.,* 2007) which would be equivalent to a single pulse with received level approximately 181 to 186 dB re 1 µPa (rms), or a series of pulses for which the highest rms values are a few dB lower. Corresponding values for California sea lions and northern elephant seals are likely to be higher (Kastak *et al.,* 2005).

Permanent Threshold Shift—When PTS occurs, there is physical damage to the sound receptors in the ear. In severe cases, there can be total or partial deafness, whereas in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges (Kryter, 1985). There is no specific evidence that exposure to pulses of airgun sound can cause PTS in any marine mammal, even with large arrays of airguns. However, given the possibility that mammals close to an airgun array might incur at least mild TTS, there has been further speculation about the possibility that some individuals occurring very close to airguns might incur PTS (*e.g.,* Richardson *et al.,* 1995, p. 372*ff;* Gedamke *et al.,* 2008). Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage, but repeated or (in some cases) single exposures to a level well above that causing TTS onset might elicit PTS.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but are assumed to be similar to those in humans and other terrestrial mammals. PTS might occur at a received sound level at least several dBs above that inducing mild TTS if the animal were exposed to strong sound pulses with rapid rise time—see Appendix B (6) of USGS's EA. Based on data from terrestrial mammals, a precautionary assumption is that the

PTS threshold for impulse sounds (such as airgun pulses as received close to the source) is at least 6 dB higher than the TTS threshold on a peak-pressure basis, and probably greater than six dB (Southall *et al.,* 2007).

Given the higher level of sound necessary to cause PTS as compared with TTS, it is considerably less likely that PTS would occur. Baleen whales generally avoid the immediate area around operating seismic vessels, as do some other marine mammals.

Stranding and Mortality—Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.,* 1993; Ketten, 1995). However, explosives are no longer used in marine waters for commercial seismic surveys or (with rare exceptions) for seismic research; they have been replaced entirely by airguns or related non-explosive pulse generators. Airgun pulses are less energetic and have slower rise times, and there is no specific evidence that they can cause serious injury, death, or stranding even in the case of large airgun arrays. However, the association of strandings of beaked whales with naval exercises involving mid-frequency active sonar and, in one case, an L–DEO seismic survey (Malakoff, 2002; Cox *et al.,* 2006), has raised the possibility that beaked whales exposed to strong "pulsed" sounds may be especially susceptible to injury and/or behavioral reactions that can lead to stranding (*e.g.,* Hildebrand, 2005; Southall *et al.,* 2007). Appendix B (6) of USGS's EA provides additional details.

Specific sound-related processes that lead to strandings and mortality are not well documented, but may include:

(1) Swimming in avoidance of a sound into shallow water;

(2) A change in behavior (such as a change in diving behavior) that might contribute to tissue damage, gas bubble formation, hypoxia, cardiac arrhythmia, hypertensive hemorrhage or other forms of trauma;

(3) A physiological change such as a vestibular response leading to a behavioral change or stress-induced hemorrhagic diathesis, leading in turn to tissue damage; and

(4) Tissue damage directly from sound exposure, such as through acoustically-mediated bubble formation and growth or acoustic resonance of tissues. Some of these mechanisms are unlikely to apply in the case of impulse sounds. However, there are indications that gas-bubble disease (analogous to "the bends"), induced in supersaturated tissue by a behavioral response to acoustic exposure, could be a pathologic mechanism for the strandings and mortality of some deep-diving cetaceans exposed to sonar. However, the evidence for this remains circumstantial and associated with exposure to naval mid-frequency sonar, not seismic surveys (Cox *et al.,* 2006; Southall *et al.,* 2007).

Seismic pulses and mid-frequency sonar signals are quite different, and some mechanisms by which sonar sounds have been hypothesized to affect beaked whales are unlikely to apply to airgun pulses. Sounds produced by airgun arrays are broadband impulses with most of the energy below one kHz. Typical military mid-frequency sonar emits non-impulse sounds at frequencies of two to 10 kHz, generally with a relatively narrow bandwidth at any one time. A further difference between seismic surveys and naval exercises is that naval exercises can involve sound sources on more than one vessel. Thus, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar signals can, in special circumstances, lead (at least indirectly) to physical damage and mortality (*e.g.,* Balcomb and Claridge, 2001; NOAA and USN, 2001; Jepson *et al.,* 2003; Fernández *et al.,* 2004, 2005; Hildebrand 2005; Cox *et al.,* 2006) suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity "pulsed" sound.

There is no conclusive evidence of cetacean strandings or deaths at sea as a result of exposure to seismic surveys, but a few cases of strandings in the general area where a seismic survey was ongoing have led to speculation concerning a possible link between seismic surveys and strandings. Suggestions that there was a link between seismic surveys and strandings of humpback whales in Brazil (Engel *et al.,* 2004) were not well founded (IAGC, 2004; IWC, 2007). In September 2002, there was a stranding of two Cuvier's beaked whales (*Ziphius cavirostris*) in the Gulf of California, Mexico, when the L–DEO vessel R/V *Maurice Ewing* was operating a 20 airgun (8,490 in^3) array in the general area. The link between the stranding and the seismic surveys was inconclusive and not based on any physical evidence (Hogarth, 2002; Yoder, 2002). Nonetheless, the Gulf of California incident plus the beaked whale strandings near naval exercises involving use of mid-frequency sonar suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales until more is known about effects of seismic surveys on those species (Hildebrand, 2005). No injuries of beaked whales are anticipated during the proposed study because of:

(1) The high likelihood that any beaked whales nearby would avoid the approaching vessel before being exposed to high sound levels, and

(2) Differences between the sound sources operated by L–DEO and those involved in the naval exercises associated with strandings.

Non-auditory Physiological Effects—Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. However, resonance effects (Gentry, 2002) and direct noise-induced bubble formations (Crum *et al.,* 2005) are implausible in the case of exposure to an impulsive broadband source like an airgun array. If seismic surveys disrupt diving patterns of deep-diving species, this might perhaps result in bubble formation and a form of the bends, as speculated to occur in beaked whales exposed to sonar. However, there is no specific evidence of this upon exposure to airgun pulses.

In general, very little is known about the potential for seismic survey sounds (or other types of strong underwater sounds) to cause non-auditory physical effects in marine mammals. Such effects, if they occur at all, would presumably be limited to short distances and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007), or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales and some odontocetes, are especially unlikely to incur non-auditory physical effects.

Potential Effects of Other Acoustic Devices

MBES

USGS will operate the Kongsberg EM 122 MBES from the source vessel during the planned study. Sounds from the MBES are very short pulses, occurring for two to 15 ms once every five to 20 s, depending on water depth. Most of the energy in the sound pulses emitted by this MBES is at frequencies near 12

kHz, and the maximum source level is 242 dB re 1 μPa (rms). The beam is narrow (1 to 2°) in fore-aft extent and wide (150°) in the cross-track extent. Each ping consists of eight (in water greater than 1,000 m deep) or four (in water less than 1,000 m deep) successive fan-shaped transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the nine segments. Also, marine mammals that encounter the Kongsberg EM 122 are unlikely to be subjected to repeated pulses because of the narrow fore–aft width of the beam and will receive only limited amounts of pulse energy because of the short pulses. Animals close to the ship (where the beam is narrowest) are especially unlikely to be ensonified for more than one 2 to 15 ms pulse (or two pulses if in the overlap area). Similarly, Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when an MBES emits a pulse is small. The animal would have to pass the transducer at close range and be swimming at speeds similar to the vessel in order to receive the multiple pulses that might result in sufficient exposure to cause TTS.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans: (1) Generally have longer pulse duration than the Kongsberg EM 122; and (2) are often directed close to horizontally versus more downward for the MBES. The area of possible influence of the MBES is much smaller—a narrow band below the source vessel. Also, the duration of exposure for a given marine mammal can be much longer for naval sonar. During USGS's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by. Possible effects of an MBES on marine mammals are outlined below.

Masking—Marine mammal communications will not be masked appreciably by the MBES signals given the low duty cycle of the echosounder and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the MBES signals (12 kHz) do not overlap with the predominant frequencies in the calls, which would avoid any significant masking.

Behavioral Responses—Behavioral reactions of free-ranging marine mammals to sonars, echosounders, and other sound sources appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.,* 1985), increased vocalizations and no dispersal by pilot whales (*Globicephala melas*) (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. During exposure to a 21 to 25 kHz "whale-finding" sonar with a source level of 215 dB re 1 μPa, gray whales reacted by orienting slightly away from the source and being deflected from their course by approximately 200 m (Frankel, 2005). When a 38 kHz echosounder and a 150 kHz acoustic Doppler current profiler were transmitting during studies in the Eastern Tropical Pacific, baleen whales showed no significant responses, while spotted and spinner dolphins were detected slightly more often and beaked whales less often during visual surveys (Gerrodette and Pettis, 2005).

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1 s tonal signals at frequencies similar to those that will be emitted by the MBES used by USGS, and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.,* 2000; Finneran *et al.,* 2002; Finneran and Schlundt, 2004). The relevance of those data to free-ranging odontocetes is uncertain, and in any case, the test sounds were quite different in duration as compared with those from an MBES.

Very few data are available on the reactions of pinnipeds to echosounder sounds at frequencies similar to those used during seismic operations. Hastie and Janik (2007) conducted a series of behavioral response tests on two captive gray seals to determine their reactions to underwater operation of a 375 kHz multibeam imaging echosounder that included significant signal components down to 6 kHz. Results indicated that the two seals reacted to the signal by significantly increasing their dive durations. Because of the likely brevity of exposure to the MBES sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the animals.

Hearing Impairment and Other Physical Effects—Given recent stranding events that have been associated with the operation of naval sonar, there is concern that mid-frequency sonar sounds can cause serious impacts to marine mammals (see above). However, the MBES proposed for use by USGS is quite different than sonar used for Navy operations. Pulse duration of the MBES is very short relative to the naval sonar. Also, at any given location, an individual marine mammal would be in the beam of the MBES for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth; Navy sonar often uses near-horizontally-directed sound. Those factors would all reduce the sound energy received from the MBES rather drastically relative to that from naval sonar.

NMFS believes that the brief exposure of marine mammals to one pulse, or small numbers of signals, from the MBES is not likely to result in the harassment of marine mammals.

SBP

USGS will also operate a SBP from the source vessel during the proposed survey. Sounds from the SBP are very short pulses, occurring for one to four ms once every second. Most of the energy in the sound pulses emitted by the SBP is at 3.5 kHz, and the beam is directed downward. The SBP on the LANGSETH has a maximum source level of 204 dB re 1 μPa.

Kremser *et al.* (2005) noted that the probability of a cetacean swimming through the area of exposure when a bottom profiler emits a pulse is small—even for an SBP more powerful than that on the LANGSETH—if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS.

Masking—Marine mammal communications will not be masked appreciably by the SBP signals given the directionality of the signal and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of most baleen whales, the SBP signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses—Marine mammal behavioral reactions to other pulsed sound sources are discussed above, and responses to the SBP are likely to be similar to those for other pulsed sources if received at the same levels. However, the pulsed signals from the SBP are considerably weaker than those from the MBES. Therefore, behavioral responses are not expected unless marine mammals are very close to the source.

Hearing Impairment and Other Physical Effects—It is unlikely that the SBP produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source. The SBP is usually operated simultaneously with other higher-power acoustic sources. Many marine

mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the SBP.

Acoustic Release Signals

The acoustic release transponder used to communicate with the OBSs uses frequencies 9 to 13 kHz. These signals will be used very intermittently. It is unlikely that the acoustic release signals would have a significant effect on marine mammals through masking, disturbance, or hearing impairment. Any effects likely would be negligible given the brief exposure at presumably low levels.

The potential effects to marine mammals described in this section of the document do not take into consideration the proposed monitoring and mitigation measures described later in this document (see the "Proposed Mitigation" and "Proposed Monitoring and Reporting" sections) which, as noted, are designed to effect the least practicable adverse impact on affected marine mammal species and stocks.

Anticipated Effects on Marine Mammal Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by the marine mammals in the proposed survey area, including the food sources they use (*i.e.* fish and invertebrates), and there will be no physical damage to any habitat. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered in further detail earlier in this document, as behavioral modification. The main impact associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, previously discussed in this notice.

Anticipated Effects on Fish

One reason for the adoption of airguns as the standard energy source for marine seismic surveys is that, unlike explosives, they have not been associated with large-scale fish kills. However, existing information on the impacts of seismic surveys on marine fish populations is limited (see Appendix D of USGS's EA). There are three types of potential effects of exposure to seismic surveys: (1) Pathological, (2) physiological, and (3) behavioral. Pathological effects involve lethal and temporary or permanent sub-lethal injury. Physiological effects involve temporary and permanent primary and secondary stress responses, such as changes in levels of enzymes and proteins. Behavioral effects refer to temporary and (if they occur) permanent changes in exhibited behavior (*e.g.,* startle and avoidance behavior). The three categories are interrelated in complex ways. For example, it is possible that certain physiological and behavioral changes could potentially lead to an ultimate pathological effect on individuals (*i.e.,* mortality).

The specific received sound levels at which permanent adverse effects to fish potentially could occur are little studied and largely unknown. Furthermore, the available information on the impacts of seismic surveys on marine fish is from studies of individuals or portions of a population; there have been no studies at the population scale. The studies of individual fish have often been on caged fish that were exposed to airgun pulses in situations not representative of an actual seismic survey. Thus, available information provides limited insight on possible real-world effects at the ocean or population scale.

Hastings and Popper (2005), Popper (2009), and Popper and Hastings (2009a,b) provided recent critical reviews of the known effects of sound on fish. The following sections provide a general synopsis of the available information on the effects of exposure to seismic and other anthropogenic sound as relevant to fish. The information comprises results from scientific studies of varying degrees of rigor plus some anecdotal information. Some of the data sources may have serious shortcomings in methods, analysis, interpretation, and reproducibility that must be considered when interpreting their results (see Hastings and Popper, 2005). Potential adverse effects of the program's sound sources on marine fish are noted.

Pathological Effects – The potential for pathological damage to hearing structures in fish depends on the energy level of the received sound and the physiology and hearing capability of the species in question (see Appendix D USGS's EA). For a given sound to result in hearing loss, the sound must exceed, by some substantial amount, the hearing threshold of the fish for that sound (Popper, 2005). The consequences of temporary or permanent hearing loss in individual fish on a fish population are unknown; however, they likely depend on the number of individuals affected and whether critical behaviors involving sound (*e.g.,* predator avoidance, prey capture, orientation and navigation, reproduction, etc.) are adversely affected.

Little is known about the mechanisms and characteristics of damage to fish that may be inflicted by exposure to seismic survey sounds. Few data have been presented in the peer-reviewed scientific literature. As far as USGS and NMFS know, there are only two papers with proper experimental methods, controls, and careful pathological investigation implicating sounds produced by actual seismic survey airguns in causing adverse anatomical effects. One such study indicated anatomical damage, and the second indicated TTS in fish hearing. The anatomical case is McCauley *et al.* (2003), who found that exposure to airgun sound caused observable anatomical damage to the auditory maculae of pink snapper (*Pagrus auratus*). This damage in the ears had not been repaired in fish sacrificed and examined almost two months after exposure. On the other hand, Popper *et al.* (2005) documented only TTS (as determined by auditory brainstem response) in two of three fish species from the Mackenzie River Delta. This study found that broad whitefish (*Coregonus nasus*) exposed to five airgun shots were not significantly different from those of controls. During both studies, the repetitive exposure to sound was greater than would have occurred during a typical seismic survey. However, the substantial low-frequency energy produced by the airguns [less than 400 Hz in the study by McCauley *et al.* (2003) and less than approximately 200 Hz in Popper *et al.* (2005)] likely did not propagate to the fish because the water in the study areas was very shallow (approximately 9 m in the former case and less than 2 m in the latter). Water depth sets a lower limit on the lowest sound frequency that will propagate (the "cutoff frequency") at about one-quarter wavelength (Urick, 1983; Rogers and Cox, 1988).

Wardle *et al.* (2001) suggested that in water, acute injury and death of organisms exposed to seismic energy depends primarily on two features of the sound source: (1) The received peak pressure and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. According to Buchanan *et al.* (2004), for the types of seismic airguns and arrays involved with the proposed program, the pathological (mortality) zone for fish would be expected to be within a few meters of the seismic source. Numerous other studies provide

examples of no fish mortality upon exposure to seismic sources (Falk and Lawrence, 1973; Holliday *et al.,* 1987; La Bella *et al.,* 1996; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b, 2003; Bjarti, 2002; Thomsen, 2002; Hassel *et al.,* 2003; Popper *et al.,* 2005; Boeger *et al.,* 2006).

Some studies have reported, some equivocally, that mortality of fish, fish eggs, or larvae can occur close to seismic sources (Kostyuchenko, 1973; Dalen and Knutsen, 1986; Booman *et al.,* 1996; Dalen *et al.,* 1996). Some of the reports claimed seismic effects from treatments quite different from actual seismic survey sounds or even reasonable surrogates. However, Payne *et al.* (2009) reported no statistical differences in mortality/morbidity between control and exposed groups of capelin eggs or monkfish larvae. Saetre and Ona (1996) applied a 'worst-case scenario' mathematical model to investigate the effects of seismic energy on fish eggs and larvae. They concluded that mortality rates caused by exposure to seismic surveys are so low, as compared to natural mortality rates, that the impact of seismic surveying on recruitment to a fish stock must be regarded as insignificant.

Physiological Effects—Physiological effects refer to cellular and/or biochemical responses of fish to acoustic stress. Such stress potentially could affect fish populations by increasing mortality or reducing reproductive success. Primary and secondary stress responses of fish after exposure to seismic survey sound appear to be temporary in all studies done to date (Sverdrup *et al.,* 1994; Santulli *et al.,* 1999; McCauley *et al.,* 2000a,b). The periods necessary for the biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus (see Appendix D of USGS's EA).

Behavioral Effects—Behavioral effects include changes in the distribution, migration, mating, and catchability of fish populations. Studies investigating the possible effects of sound (including seismic survey sound) on fish behavior have been conducted on both uncaged and caged individuals (*e.g.,* Chapman and Hawkins, 1969; Pearson *et al.,* 1992; Santulli *et al.,* 1999; Wardle *et al.,* 2001; Hassel *et al.,* 2003). Typically, in these studies fish exhibited a sharp startle response at the onset of a sound followed by habituation and a return to normal behavior after the sound ceased.

There is general concern about potential adverse effects of seismic operations on fisheries, namely a potential reduction in the "catchability" of fish involved in fisheries. Although reduced catch rates have been observed in some marine fisheries during seismic testing, in a number of cases the findings are confounded by other sources of disturbance (Dalen and Raknes, 1985; Dalen and Knutsen, 1986; Lokkeborg, 1991; Skalski *et al.,* 1992; Engas *et al.,* 1996). In other airgun experiments, there was no change in catch per unit effort (CPUE) of fish when airgun pulses were emitted, particularly in the immediate vicinity of the seismic survey (Pickett *et al.,* 1994; La Bella *et al.,* 1996). For some species, reductions in catch may have resulted from a change in behavior of the fish, *e.g.,* a change in vertical or horizontal distribution, as reported in Slotte *et al.* (2004).

In general, any adverse effects on fish behavior or fisheries attributable to seismic testing may depend on the species in question and the nature of the fishery (season, duration, fishing method). They may also depend on the age of the fish, its motivational state, its size, and numerous other factors that are difficult, if not impossible, to quantify at this point, given such limited data on effects of airguns on fish, particularly under realistic at-sea conditions.

Anticipated Effects on Invertebrates

The existing body of information on the impacts of seismic survey sound on marine invertebrates is very limited. However, there is some unpublished and very limited evidence of the potential for adverse effects on invertebrates, thereby justifying further discussion and analysis of this issue. The three types of potential effects of exposure to seismic surveys on marine invertebrates are pathological, physiological, and behavioral. Based on the physical structure of their sensory organs, marine invertebrates appear to be specialized to respond to particle displacement components of an impinging sound field and not to the pressure component (Popper *et al.,* 2001; see also Appendix E of USGS's EA).

The only information available on the impacts of seismic surveys on marine invertebrates involves studies of individuals; there have been no studies at the population scale. Thus, available information provides limited insight on possible real-world effects at the regional or ocean scale. The most important aspect of potential impacts concerns how exposure to seismic survey sound ultimately affects invertebrate populations and their viability, including availability to fisheries.

Literature reviews of the effects of seismic and other underwater sound on invertebrates were provided by Moriyasu *et al.* (2004) and Payne *et al.* (2008). The following sections provide a synopsis of available information on the effects of exposure to seismic survey sound on species of decapod crustaceans and cephalopods, the two taxonomic groups of invertebrates on which most such studies have been conducted. The available information is from studies with variable degrees of scientific soundness and from anecdotal information. A more detailed review of the literature on the effects of seismic survey sound on invertebrates is provided in Appendix E of USGS's EA.

Pathological Effects—In water, lethal and sub-lethal injury to organisms exposed to seismic survey sound appears to depend on at least two features of the sound source: (1) The received peak pressure; and (2) the time required for the pressure to rise and decay. Generally, as received pressure increases, the period for the pressure to rise and decay decreases, and the chance of acute pathological effects increases. For the type of airgun array planned for the proposed program, the pathological (mortality) zone for crustaceans and cephalopods is expected to be within a few meters of the seismic source, at most; however, very few specific data are available on levels of seismic signals that might damage these animals. This premise is based on the peak pressure and rise/decay time characteristics of seismic airgun arrays currently in use around the world.

Some studies have suggested that seismic survey sound has a limited pathological impact on early developmental stages of crustaceans (Pearson *et al.,* 1994; Christian *et al.,* 2003; DFO, 2004). However, the impacts appear to be either temporary or insignificant compared to what occurs under natural conditions. Controlled field experiments on adult crustaceans (Christian *et al.,* 2003, 2004; DFO, 2004) and adult cephalopods (McCauley *et al.,* 2000a,b) exposed to seismic survey sound have not resulted in any significant pathological impacts on the animals. It has been suggested that exposure to commercial seismic survey activities has injured giant squid (Guerra *et al.,* 2004), but the article provides little evidence to support this claim.

Physiological Effects—Physiological effects refer mainly to biochemical responses by marine invertebrates to acoustic stress. Such stress potentially could affect invertebrate populations by increasing mortality or reducing

reproductive success. Primary and secondary stress responses (*i.e.,* changes in haemolymph levels of enzymes, proteins, etc.) of crustaceans have been noted several days or months after exposure to seismic survey sounds (Payne *et al.,* 2007). The periods necessary for these biochemical changes to return to normal are variable and depend on numerous aspects of the biology of the species and of the sound stimulus.

Behavioral Effects—There is increasing interest in assessing the possible direct and indirect effects of seismic and other sounds on invertebrate behavior, particularly in relation to the consequences for fisheries. Changes in behavior could potentially affect such aspects as reproductive success, distribution, susceptibility to predation, and catchability by fisheries. Studies investigating the possible behavioral effects of exposure to seismic survey sound on crustaceans and cephalopods have been conducted on both uncaged and caged animals. In some cases, invertebrates exhibited startle responses (*e.g.,* squid in McCauley *et al.,* 2000a,b). In other cases, no behavioral impacts were noted (*e.g.,* crustaceans in Christian *et al.,* 2003, 2004; DFO 2004). There have been anecdotal reports of reduced catch rates of shrimp shortly after exposure to seismic surveys; however, other studies have not observed any significant changes in shrimp catch rate (Andriguetto-Filho *et al.,* 2005). Similarly, Parry and Gason (2006) did not find any evidence that lobster catch rates were affected by seismic surveys. Any adverse effects on crustacean and cephalopod behavior or fisheries attributable to seismic survey sound depend on the species in question and the nature of the fishery (season, duration, fishing method).

Proposed Mitigation

In order to issue an Incidental Take Authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and the availability of such species or stock for taking for certain subsistence uses.

USGS has based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous USGS and L–DEO seismic research cruises as approved by NMFS;

(2) Previous IHA applications and IHAs approved and authorized by NMFS; and

(3) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman, (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the activities, USGS and/or its designees has proposed to implement the following mitigation measures for marine mammals:

(1) Proposed exclusion zones;

(2) Power-down procedures;

(3) Shut-down procedures;

(4) Ramp-up procedures; and

(5) Special procedures for situations and species of concern.

Planning Phase—In designing the proposed seismic survey, USGS has considered potential environmental impacts including seasonal, biological, and weather factors; ship schedules; and equipment availability. Part of the considerations was whether the research objectives could be met with a smaller source; tests will be conducted to determine whether the two-string sub-array (3,300 in^3) will be satisfactory to accomplish the geophysical objectives. If so, the smaller array will be used to minimize environmental impact. Also, the array will be powered-down to a single airgun during turns, and the array will be shut-down during OBS deployment and retrieval.

Proposed Exclusion Zones—Received sound levels have been determined by empirical corrected measurements for the 36 airgun array, and a L–DEO model was used to predict the EZs for the single 1900LL 40 in^3 airgun, which will be used during power-downs. Results were recently reported for propagation measurements of pulses from the 36 airgun array in two water depths (approximately 1,600 m and 50 m [5,249 to 164 ft]) in the Gulf of Mexico in 2007 to 2008 (Tolstoy *et al.,* 2009). It would be prudent to use the empirical values that resulted to determine EZs for the airgun array. Results of the propagation measurements (Tolstoy *et al.,* 2009) showed that radii around the airguns for various received levels varied with water depth. During the proposed study, all survey effort will take place in deep (greater than 1,000 m) water, so propagation in shallow water is not relevant here. The depth of the array was different in the Gulf of Mexico calibration study (6 m [19.7 ft]) than in the proposed survey (9 m); thus, correction factors have been applied to the distances reported by Tolstoy *et al.* (2009). The correction factors used were the ratios of the 160, 180, and 190 dB distances from the modeled results for the 6,600 in^3 airgun array towed at 6 m versus 9 m. Based on the propagation measurements and modeling, the distances from the source where sound levels are predicted to be 190, 180, and 160 dB re 1 μPa (rms) were determined (see Table 1 above). The 180 and 190 dB radii are to 940 m and 400 m, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. If the PSVO detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered-down (or shut-down, if necessary) immediately.

Power-down Procedures—A power-down involves decreasing the number of airguns in use such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, USGS will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when the LANGSETH suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, USGS will power-down the airguns before the animal is within the EZ. Likewise, if a mammal is already within the EZ, when first detected USGS will power-down the airguns immediately. During a power-down of the airgun array, USGS will also operate the 40 in^3 airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), USGS will shut-down the airgun (see next section).

Following a power-down, USGS will not resume airgun activity until the marine mammal has cleared the EZ. L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (*i.e.,* small odontocetes or pinnipeds), or 30 min for species with longer dive durations (*i.e.,* mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, killer, and beaked whales).

During airgun operations following a power-down (or shut-down) whose duration has exceeded the time limits specified previously, USGS will ramp-up the airgun array gradually (see Shut-down and Ramp-up Procedures).

Shut-down Procedures—USGS will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. USGS will implement a shut-down:

(1) If an animal enters the EZ of the single airgun after USGS has initiated a power-down; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

USGS will not resume airgun activity until the marine mammal has cleared the EZ, or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section.

Ramp-up Procedures—USGS will follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. USGS proposes that, for the present cruise, this period would be approximately eight min. This period is based on the 180 dB radius (940 m) for the 36 airgun array towed at a depth of 9 m in relation to the minimum planned speed of the LANGSETH while shooting (7.4 km/hr). USGS and L–DEO have used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in^3). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding six dB per five min period over a total duration of approximately 35 min. During ramp-up, the PSOs will monitor the EZ, and if marine mammals are sighted, USGS will implement a power-down or shut-down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, USGS will not commence the ramp-up unless at least one airgun (40 in^3 or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. USGS will not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or close to the vessel at night.

Special Procedures for Situations and Species of Concern—USGS will implement special mitigation procedures as follows:

- The airguns will be shut-down immediately if ESA-listed species for which no takes are being requested (*i.e.,* North Pacific right and blue whales) are sighted at any distance from the vessel. Ramp-up will only begin if the whale has not been seen for 30 min.
- Concentrations of humpback, fin, and/or killer whales will be avoided if possible, and the array will be powered-down if necessary. For purposes of this proposed survey, a concentration or group of whales will consist of three or more individuals visually sighted and do not appear to be traveling (*e.g.,* feeding, socializing, etc.).

NMFS has carefully evaluated the applicant's proposed mitigation measures and has considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. NMFS's evaluation of potential measures included consideration of the following factors in relation to one another:

(1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;

(2) The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and

(3) The practicability of the measure for applicant implementation.

Based on NMFS's evaluation of the applicant's proposed measures, as well as other measures considered by NMFS or recommended by the public, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth "requirements pertaining to the monitoring and reporting of such taking." The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area.

Monitoring

USGS proposes to sponsor marine mammal monitoring during the proposed project, in order to implement the proposed mitigation measures that require real-time monitoring, and to satisfy the anticipated monitoring requirements of the IHA. USGS's proposed Monitoring Plan is described below this section. USGS understands that this monitoring plan will be subject to review by NMFS, and that refinements may be required. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. USGS is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

Vessel-Based Visual Monitoring

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 min prior to the start of airgun operations after an extended shut-down. PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated EZ. The EZ is a region in which a possibility exists of adverse effects on animal hearing or other physical effects.

During seismic operations in the central-western Bering Sea, at least four PSOs will be based aboard the LANGSETH. USGS will appoint the PSOs with NMFS' concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of

detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts of duration no longer than 4 hrs.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSO will monitor the PAM equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The LANGSETH is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually, but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When marine mammals are detected within or about to enter the designated EZ, the airguns will immediately be powered-down or shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes and large odontocetes, including sperm, killer, and beaked whales).

Passive Acoustic Monitoring (PAM)

PAM will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional Protected Species Acoustic Observer (PSAO) with primary responsibility for PAM will also be aboard the vessel. USGS can use acoustic monitoring in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals call, but it can be effective either by day or by night, and does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when cetaceans are detected. When bearings (primary and mirror-image) to calling cetacean(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (*i.e.,* hydrophones) and software. The "wet end" of the system consists of a towed hydrophone array that is connected to the vessel by a cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer laboratory where the acoustic station and signal conditioning and processing system will be located. The digitized signal and PAM system is monitored by PSAOs at a station in the main laboratory. The lead in from the hydrophone array is approximately 400 m (1,312 ft) long, the active section of the array is approximately 56 m (184 ft) long, and the hydrophone array is typically towed at depths of less than 20 m (66 ft).

Ideally, the PSAO will monitor the towed hydrophones 24 hr per day at the seismic survey area during airgun operations, and during most periods when the LANGSETH is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the LANGSETH is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, USGS would continue science acquisition with the visual-based observer program. The PAM system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM then conditions would also likely prevent the use of the airgun array.

One PSAO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by cetaceans. PSAOs monitoring the acoustical data will be on shift for one to six hours at a time. Besides the PSVO, an additional PSAO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of cetaceans (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (*e.g.,* unidentified dolphin, sperm whale), types and nature of sounds heard (*e.g.,* clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

PSVO Data and Documentation

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the EZ. Observations will also be made during daytime periods when the LANGSETH is underway without seismic operations. In addition to transits to, from, and through the study area, there will also be opportunities to collect baseline biological data during the deployment and recovery of OBSs.

When a sighting is made, the following information about the sighting will be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace.

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

(1) The basis for real-time mitigation (airgun power-down or shut-down).

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

USGS will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations, and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in "takes" of marine mammals by harassment or in other ways.

USGS will report all injured or dead marine mammals (regardless of cause) to NMFS as soon as practicable. The report should include the species or description of the animal, the condition of the animal, location, time first found, observed behaviors (if alive) and photo or video, if available. In the unanticipated event that any taking of a marine mammal in a manner prohibited by the proposed IHA occurs, such as an injury, serious injury, or mortality, and are judged to result from the proposed activities, the operator will immediately report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS. The operator will postpone the proposed activities until NMFS is able to review the circumstances of the take. NMFS will work with the operator to determine whether modifications in the activities are appropriate and necessary, and notify the operator that they may resume sound source operations.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Only take by Level B harassment is anticipated and proposed to be authorized as a result of the proposed marine geophysical survey in the central-western Bering Sea. Acoustic stimuli (*i.e.,* increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. There is no evidence that the planned activities could result in injury, serious injury, or mortality within the specified geographic area for which USGS seeks the IHA. The proposed mitigation and monitoring measures would minimize any potential risk for injury, serious injury, or mortality.

The following sections describe USGS's methods to estimate take by incidental harassment and present the applicant's estimates of the numbers of marine mammals that could be affected during the proposed seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 36 airgun array to be used during approximately 3,300 km (1,782 nmi) of survey lines in the central-western Bering Sea.

USGS assumes that, during simultaneous operations of the airgun array and the other sources, any marine mammals close enough to be affected by the MBES and SBP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES and SBP given their characteristics (*e.g.,* narrow, downward-directed beam) and other considerations described previously. Such reactions are not considered to constitute "taking" (NMFS, 2001). Therefore, USGS provides no additional allowance for animals that could be affected by sound sources other than airguns.

There are no systematic data on the numbers or densities of marine mammals in the deep waters adjacent to the survey area in the central-western Bering Sea. The closest survey data are from the shelf and slope waters of the central-eastern Bering Sea (CEBS) and the southeastern Bering Sea (SEBS), mostly in water depths greater than 500 m, collected during walleye Pollock assessment cruises. Tynan (2004) reported densities of common species in the SEBS during July 1997 and June 1999. Moore *et al.* (2002) and Waite *et al.* (2002) reported densities for the CEBS during July 1999 and the SEBS during June 2000. Friday *et al.* (2009, 2011) reported marine mammal sightings, numbers, and survey effort in the CEBS and SEBS during June-July 2002, 2008, and 2010.

Table 2 (Table 6 of the IHA application) gives the estimated average (best) and maximum densities of marine mammals expected to occur in the deep, offshore waters of the proposed survey area. For cetaceans, USGS used the densities reported by Moore *et al.* (2002) for the CEBS, which were corrected for detectability bias (f(0)), but not availability bias (g(0)); g(0) was assumed to be 1). USGS calculated density estimates from the Friday *et al.* (2011) effort and sightings northwest of the Pribilof Islands using values for f(0) and g(0) from Barlow and Forney (2007). For two species sighted in the SEBS, but not the CEBS (Baird's beaked whale and Pacific white-sided dolphin), USGS

assigned small densities. Finally, USGS used seasonal densities for pinnipeds, which were based on counts at haul-out sites and biological (mostly breeding) information to estimate in-water densities.

There is some uncertainty about the representativeness of the data and the assumptions used in the calculations below for two main reasons: (1) The surveys from which cetacean densities were derived were conducted in June-July whereas the proposed seismic survey is in August; and (2) they were in shelf and slope waters, where most marine mammals are expected to occur in much higher densities than in the deep, offshore waters of the proposed survey area. However, the densities are based on a considerable survey effort (19,160 km), and the marine mammal surveys and the proposed seismic survey are in the same season; therefore, the approach used here is believed to be the best available approach.

Also, to provide some allowance for these uncertainties, "maximum estimates" as well as "best estimates" of the densities present and numbers potentially affected have been derived. Best estimates of cetacean density are effort-weighted mean densities from the various surveys, whereas maximum estimates of density come from the individual survey that provided the highest density. For marine mammals where only one density estimate was available, the maximum is 1.5x the best estimate.

For one species, the Dall's porpoise, density estimates in the original reports are much higher than densities expected during the proposed survey, because this porpoise is attracted to vessels. USGS estimates for Dall's porpoises are from vessel-based surveys without seismic activity; they are overestimates possibly by a factor of 5x, given the tendency of this species to approach vessels (Turnock and Quinn, 1991). Noise from the airgun array during the proposed survey is expected to at least reduce and possibly eliminate the tendency of this porpoise to approach the vessel. Dall's porpoises are tolerant of small airgun sources (MacLean and Koski, 2005) and tolerated higher sound levels than other species during a large-array survey (Bain and Williams, 2006); however, they did respond to that and another large airgun array by moving away (Calambokidis and Osmek, 1998; Bain and Williams, 2006). Because of the probable overestimates, the best and maximum estimates for Dall's porpoises shown in Table 2 (Table 6 of the IHA application) are one-quarter of the reported densities. In fact, actual densities are probably slightly lower than that.

USGS's estimates of exposures to various sound levels assume that the proposed surveys will be fully completed including the contingency line; in fact, the ensonified areas calculated using the planned number of line-km have been increased by 25% to accommodate lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. Furthermore, any marine mammal sightings within or near the designated EZs will result in the power-down or shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to sound levels of 160 dB re 1 μPa (rms) are precautionary and probably overestimate the actual numbers of marine mammals that might be involved. These estimates also assume that there will be no weather, equipment, or mitigation delays, which is highly unlikely.

USGS estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the proposed survey, the seismic lines are widely spaced in the survey area, so few individual marine mammals would be exposed more than once during the survey. The area including overlap is only 1.74 times the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa was calculated by multiplying:

(1) The expected species density, either "mean" (*i.e.,* best estimate) or "maximum", times

(2) The anticipated area to be ensonified to that level during airgun operations excluding overlap.

The area expected to be ensonified was determined by entering the planned survey lines into a MapInfo GIS, using the GIS to identify the relevant areas by "drawing" the applicable 160 dB buffer (see Table 1 of the IHA application) around each seismic line, and then calculating the total area within the buffers. Areas of overlap (because of lines being closer together than the 160 dB radius) were limited and included only once when estimating the number of individuals exposed. Before calculating numbers of individuals exposed, the areas were increased by 25% as a precautionary measure.

Table 2 (Table 4 of the IHA application) shows the best and maximum estimates of the number of different individual marine mammals that potentially could be exposed to greater than or equal to 160 dB re 1 μPa (rms) during the seismic survey if no animals moved away from the survey vessel. The requested take authorization, given in Table 3 (the far right column of Table 4 of the IHA application), is based on the maximum estimates rather than the best estimates of the numbers of individuals exposed, because of uncertainties about the representativeness of the density data discussed previously.

Applying the approach described above, approximately 12,372 km^2 (6,680 nmi^2) (approximately 15,465 km^2 [8,350 nmi^2] including the 25% contingency) would be within the 160 dB isopleths on one or more occasions during the survey, assuming that the contingency line is completed. Because this approach does not allow for turnover in the marine mammal populations in the study area during the course of the survey, the actual number of individuals exposed could be underestimated. However, the approach assumes that no cetaceans will move away from or toward the trackline as the LANGSETH approaches in response to increasing sound levels prior to the time the levels reach 160 dB, which will result in overestimates for those species known to avoid seismic vessels.

The "best estimate" of the number of individual cetaceans that could be exposed to seismic sounds with greater than or equal to 160 dB re 1 μPa (rms) during the proposed survey is 271 (see Table 7 of the IHA application). That total includes 69 whales listed as endangered under the ESA (6 humpback, 61 fin, 1 sei, and 1 sperm whale), which would represent less than 0.03%, 0.38%, 0.01%, and 0.01%, respectively, of the regional populations. It also includes five Baird's beaked whales, 2 Stejneger's beaked whales, 44 killer whales, and 19 minke whales, which would represent 0.02%, Not Available (NA), 0.51%, and 0.08%

of the regional populations, respectively. Dall's porpoises are expected to be the most common odontocete species in the study area; the number of Dall's porpoises that could be exposed is 137 or 0.01% of the regional population. This may be a slight overestimate because the estimated densities are slight overestimates. Estimates for other species are lower. The "maximum estimates" total 703 cetaceans. "Best estimates" of 42 Steller sea lions, 441 northern fur seals, and 674 ribbon seals could be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 µPa (rms). These estimates represent 0.06% of the Steller sea lion regional population, 0.04% of the northern fur seal regional population, and 0.71% of the ribbon seal regional population. The estimated numbers of pinnipeds that could be exposed to received levels greater than or equal to 160 dB re 1 µPa (rms) are probably overestimates of the actual numbers that will be affected. During the August survey period, the Steller sea lion is in its breeding season, with males staying on land and females with pups generally staying close to the rookeries in shallow water. Male northern fur seals are at their rookeries in June, and adult females are either there or migrating there, possibly through the survey area. No takes have been requested for North Pacific right, gray, and blue whales, Cuvier's beaked whales, and Pacific white-sided dolphins.

TABLE 3—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO DIFFERENT SOUND LEVELS ≥160 dB DURING USGS'S PROPOSED SEISMIC SURVEY IN THE CENTRAL-WESTERN BERING SEA DURING AUGUST, 2011

Species	Estimated number of individuals exposed to sound levels ≥ 160 dB re 1 µPa (Best [1])	Estimated number of individuals exposed to sound levels ≥ 160 dB re 1 µPa (Maximum [1])	Requested take authorization	Approximate percent of regional population [2] (Best)
Mysticetes:				
North Pacific right whale	0	0	0	0
Gray whale	0	2	0	<0.01
Humpback whale	6	16	6	0.03
Minke whale	19	63	19	0.08
Sei whale	1	9	1	0.01
Fin whale	61	263	61	0.38
Blue whale	0	0	0	0
Physeteridae:				
Sperm whale	1	2	1	<0.01
Ziphidae:				
Cuvier's beaked whale	0	0	0	0
Baird's beaked whale	1	2	5	0.02
Stejneger's beaked whale	1	2	2	NA
Delphinidae:				
Killer whale	44	61	44	0.51
Pacific white-sided dolphin	0	1	0	<0.01
Phocoenidae:				
Dall's porpoise	137	282	137	0.01
Pinnipeds:				
Northern fur seal	441	661	441	0.04
Steller sea lion	42	63	42	0.06
Ribbon Seal	674	1011	674	0.71

[1] Best and maximum estimates are based on densities from Table 3 and ensonified areas (including 25% contingency) of 15,465 km^2 for 160 dB.

[2] Regional population size estimates are from Table 2 (see Table 2 of the IHA application); NA means not available.

Encouraging and Coordinating Research

USGS will coordinate the planned marine mammal monitoring program associated with the seismic survey in the central-western Bering Sea with other parties that may have interest in the area and/or be conducted marine mammal studies in the same region during the proposed seismic survey. USGS will coordinate with applicable U.S. agencies (*e.g.,* NMFS), and will comply with their requirements.

Negligible Impact and Small Numbers Analysis and Determination

NMFS has defined "negligible impact" in 50 CFR 216.103 as "* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Based on the analysis contained herein, of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS, on behalf of the Secretary, preliminarily finds that USGS's activities would result in the incidental take of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey in the central-western Bering Sea would have a negligible impact on the affected species or stocks of marine mammals.

For reasons stated previously in this document, the specified activities associated with the marine seismic survey are not likely to cause TTS, PTS, or other non-auditory injury, serious injury, or death. The potential for temporary or permanent hearing impairment is very low and would be minimized through the incorporation of the proposed monitoring and mitigation measures.

In making a negligible impact determination, NMFS evaluated factors such as:

(1) The number of anticipated injuries, serious injuries, or mortalities;

(2) The number, nature, and intensity, and duration of Level B harassment (all relatively limited); and

(3) The context in which the takes occur (*i.e.,* impacts to areas of significance, impacts to local

populations, and cumulative impacts when taking into account successive/contemporaneous actions when added to baseline data);

(4) The status of stock or species of marine mammals (*i.e.,* depleted, not depleted, decreasing, increasing, stable, impact relative to the size of the population);

(5) Impacts on habitat affecting rates of recruitment/survival; and

(6) The effectiveness of monitoring and mitigation measures.

As mentioned previously, NMFS estimates that 12 species of marine mammals could be potentially affected by Level B harassment over the course of the IHA. For each species, these numbers are small (each, less than one percent) relative to the population size.

No injuries, serious injuries, or mortalities are anticipated to occur as a result of the USGS's planned marine seismic survey, and none are authorized. Only short-term behavioral disturbance is anticipated to occur due to the brief and sporadic duration of the survey activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival.

NMFS has preliminarily determined, provided that the aforementioned mitigation and monitoring measures are implemented, that the impact of conducting a marine geophysical survey in the central-western Bering Sea, August, 2011, may result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals.

While behavioral modifications, including temporarily vacating the area during the operation of the airgun(s), may be made by these species to avoid the resultant acoustic disturbance, the availability of alternate areas within these areas and the short and sporadic duration of the research activities, have led NMFS to preliminary determine that this action will have a negligible impact on the species in the specified geographic region.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that USGS's planned research activities, will result in the incidental take of small numbers of marine mammals, by Level B harassment only, and that the total taking from the marine seismic survey will have a negligible impact on the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

Section 101(a)(5)(D) of the MMPA also requires NMFS to determine that the authorization will not have an unmitigable adverse effect on the availability of marine mammal species or stocks for subsistence use. There are no relevant subsistence uses of marine mammals in the study area (deep, offshore waters of the central-western Bering Sea) that implicate MMPA section 101(a)(5)(D).

Endangered Species Act

Of the species of marine mammals that may occur in the proposed survey area, several are listed as endangered under the ESA, including the North Pacific right, humpback, sei, fin, blue, and sperm whales, as well as the western stock of Steller sea lions. The eastern stock of Steller sea lions is listed as threatened. Under section 7 of the ESA, USGS has initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS's Office of Protected Resources, Permits, Conservation and Education Division, has initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on threatened and endangered marine mammals and, if appropriate, authorizing incidental take. NMFS will conclude formal section 7 consultation prior to making a determination on whether or not to issue the IHA. If the IHA is issued, USGS, in addition to the mitigation and monitoring requirements included in the IHA, will be required to comply with the Terms and Conditions of the Incidental Take Statement corresponding to NMFS's Biological Opinion issued to both USGS and NMFS's Office of Protected Resources.

National Environmental Policy Act (NEPA)

With its complete application, USGS provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of USGS is entitled "Environmental Assessment of a Marine Geophysical Survey by the R/V MARCUS G. LANGSETH in the central-western Bering Sea, August 2011." Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or, after review and evaluation of the USGS EA for consistency with the regulations published by the Council of Environmental Quality (CEQ) and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Environmental Policy Act, adopt the USGS EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI).

Proposed Authorization

NMFS proposes to issue an IHA to USGS for conducting a marine geophysical survey in the central-western Bering Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The duration of the IHA would not exceed one year from the date of its issuance.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see ADDRESSES). Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 1, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA372

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Training Exercises in Three East Coast Range Complexes

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

ACTION: Notice; issuance of three Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued three one-year Letters of Authorization

(LOAs) to take marine mammals by harassment incidental to the U.S. Navy's training activities within the Navy's Virginia Capes (VACAPES), Jacksonville (JAX), and Cherry Point (CHPT) Range Complexes to the Commander, U.S. Fleet Forces Command, 1562 Mitscher Avenue, Suite 250, Norfolk, VA 23551–2487 and persons operating under his authority.

DATES: Effective from June 5, 2011, through June 4, 2012.

ADDRESSES: Copies of the Navy's January 2011 LOA applications, the LOAs, the Navy's 2010 marine mammal monitoring report and the Navy's 2010 exercise report are available by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS (301) 713–2289 x 137.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

Authorization may be granted for periods of 5 years or less if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's training activities at the Navy's VACAPES, JAX, and Cherry Point range complexes were published on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; CHPT: 74 FR 28370) and remain in effect through June 4, 2014. They are codified at 50 CFR part 218 subpart A (for VACAPES Range Complex), subpart B (for JAX Range Complex), and subpart C (for Cherry Point Range Complex). These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the Navy's range complex training exercises. For detailed information on these actions, please refer to the June 15, 2009 **Federal Register** Notices and 50 CFR part 218 subparts A, B, and C. An interim final rule for the modification of certain Navy training activities at VACAPES and JAX was published on May 26, 2011 (76 FR 30552).

Summary of LOA Request

NMFS received an application from the U.S. Navy for three LOAs covering the Navy's training activities at the VACAPES, JAX, and CHPT range complexes off the US East Coast under the regulations issued on June 15, 2009 (VACAPES: 74 FR 28328; JAX: 74 FR 28349; Cherry Point: 74 FR 28370). The Navy requested several minor modifications to their training activities within the VACAPES and JAX Range Complexes starting in 2011 (see detailed description in "Planned Activities for 2011" section), and requested that these LOAs become effective on June 5, 2011. In order to allow for the Navy's proposed modification in its training activities at VACAPES and JAX range complexes, NMFS issued an interim final rule (76 FR 30552; May 26, 2011) to allow flexibilities in the Navy's evolving training programs as long as the impacts to the environment do not exceed the impacts analyzed in the original regulations for these range complexes. The application requested authorization, for a period not to exceed one year, to take, by harassment, marine mammals incidental to proposed training activities that involve underwater explosives.

Summary of Activity Under the 2010 VACAPES, JAX, and CHPT LOAs

As described in the Navy's exercise reports for VACAPES, JAX, and CHPT Range Complexes, in 2010, the training activities conducted by the Navy were within the scope and amounts contemplated by the final rule and identified by the 2010 LOAs. In fact, the number of training exercises was below the Navy's proposed 2010 operations, except for mine exercises (MINEX) at VACAPES Range Complex, which exceeded the annual planned amount of 24 events by an extra 31 events. However, this level is still under the total of 120 events authorized under the 5-year rule, and the take of marine mammals was still below that authorized in the LOAs. A detailed description of the Navy's 2010 training activities can be found in the exercise reports posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Planned Activities for 2011

In 2011, the Navy plans to make some minor modifications to its training activities at the VACAPES and JAX range complexes, while maintaining the same type and amount of training activities at the CHPT Range Complex, as compared to the final rules and the 2010 LOAs. A detailed description of these proposed modifications is provided below.

Modification for Training at VACAPES Range Complex

Within the VACAPES Range Complex, the Navy estimates an increase in the number of MINEX training events. In June 2009, NMFS specified 20 lb NEW charges for VACAPES Range Complex based on the Navy's preliminary estimate of 24 events at the time of the original Request for Letter of Authorization. To accommodate emergent MINEX training requirements, the Navy requested a revised authorization of 9 5-lb NEW charges, 150 10-lb NEW charges, and 160 20-lb NEW charges per year, as listed in Table 1. No change is requested for MINEX using the Airborne Mine Neutralization System (AMNS).

Training using 5-, 10-, and 20-lb NEW charges during MINEX would occur at the same locations in VACAPES where previous 20-lb NEW charges would typically occur. These locations are the same MINEX training areas described under NMFS June 15, 2009, final rule (VACAPES: 74 FR 28328).

In addition, the Navy estimates an increase in the number of bombing exercise (BOMBEX) training events. However, instead of training with the MK–83 (1,000 lb) bombs, training will use the MK–82 (500 lb) bombs. In June 2009, NMFS authorized 20 MK–83 bombs per year for VACAPES Range Complex based on the Navy's preliminary estimate at the time of the original Request for Letter of Authorization. To accommodate an increased need for BOMBEX training based on changes to training requirements, the Navy requests that MK–82 bombs be added to the list of ordnance for BOMBEX. For 2011–2013,

the Navy anticipates 40 MK–82 (500 lb) bombs and no MK–83 (1,000 lb) bombs will be used per year, as listed in Table 1. Although the number of bombs requested is increasing, the type of bomb (MK–82) is smaller (500 lb) and has fewer explosives, and therefore the potential exposures are reduced.

Training using MK–82 bombs during BOMBEX would occur at the same location in VACAPES Range Complex where MK–83 bomb use would typically occur. This location is the same BOMBEX training area described under NMFS June 15, 2009, final rule (VACAPES: 74 FR 28328).

Modification for Training at JAX Range Complex

With in the JAX Range Complex, the Navy estimates a reduction in the number of MINEX 20-lb NEW charge training events. In June 2009, NMFS authorized 12 events using 20-lb NEW charges per year for JAX Range Complex based on the Navy's preliminary estimate at the time of the original Request for Letter of Authorization. Given new information on planned Fleet MINEX training that was not previously available, the Navy requested a revised authorization for 10 MINEX events per year as listed in Table 1.

TABLE 1—COMPARISON OF CHANGES FOR ANNUAL TRAINING ACTIVITIES STARTING FROM 2011 AT THE VACAPES AND JAX RANGE COMPLEXES

	2009	2010	2011	2012	2013
VACAPES Range Complex					
MINEX (5-lb NEW charges)	0	0	9	9	9
MINEX (10-lb NEW charges)	0	0	150	150	150
MINEX (20-lb NEW charges)	24	24	160	160	160
BOMBEX (MK–82 bombs)	0	0	40	40	40
BOMBEX (MK–83 bombs)	20	20	0	0	0
JAX Range Complex					
MINEX (20-lb NEW charges)	12	12	12	10	10
MISSILEX (Maverick missiles)	3	3	10	10	10
FIREX with IMPASS (BB & CC box)	10	10	5	5	5
FIREX with IMPASS (JAX Deepwater Site)	0	0	5	5	5

In addition, the Navy estimates an increase in the number of Maverick missile exercise (MISSILEX) training events. In June 2009, NMFS authorized 3 events using Maverick missiles per year for training at the JAX Range Complex based on the Navy's preliminary estimate at the time of original Request for Letter of Authorizations submission. To accommodate an increased need for Maverick MISSILEX training based on changes to training requirements, the Navy requested a revised authorization of 10 events using Maverick missiles per year as listed in Table 1.

Finally, the Navy requires an additional training location for firing exercise (FIREX) with Integrated Maritime Portable Acoustic Scoring and Simulation System (IMPASS) training events. In June 2009, NMFS authorized 10 FIREX with IMPASS events per year for JAX Range Complex within the BB and CC boxes based on the preliminary estimate available at the time of the original Request for Letter of Authorization. Given new information on planned Fleet FIREX with IMPASS training that was not previously available, the Navy requested a revised annual authorization for FIREX with IMPASS events to also occur in the new proposed FIREX with IMPASS training location, the JAX Deepwater IMPASS Site further offshore. The Navy also requested a reduction in the number of events occurring at the BB and CC sites. The total number of events from training at both locations remains the same (10 events).

No modification is proposed by the Navy for its planned 2011 activities at the CHPT Range Complex.

In addition, due to a recent underwater detonation (UNDET) training event during which common dolphins were killed, the Navy is suspending all underwater explosive detonations using time-delay devices during training. While this suspension is in place, the Navy will continue to conduct UNDETs under positive control, when detonation can be suspended if a marine mammal enters a pre-established safety zone. For these events, the Navy shall continue to follow all UNDET training mitigation measures as outlined in the final rule and the LOA.

Estimated Take for 2011

The estimated takes for the Navy's proposed 2011 training exercises are the same as those authorized in 2010. No change has been made in the estimated takes from the 2009 LOAs.

Although the Navy has made several changes to its training activities within the VACAPES and JAX range complexes, the calculation of exposures for these changes were completed by the Navy using the same model, criteria, and location originally used to calculate exposures from these activities when the Navy applied for the LOAs. The methodology is described on pages 6—21 of the original VACAPES LOA application (DoN 2008a) and pages 6—17 of the original JAX LOA application (DoN 2008b), respectively.

For the MINEX activities within the VACAPES Range Complex, the change from 24 20-lb NEW charges to 9 5-lb NEW charges, 150 10-lb NEW charges, and 160 20-lb NEW charges would result in an additional 7 Level B exposures and 1 Level A exposure.

For the BOMBEX activities within the VACAPES Range Complex, the change from 20 MK–83 (1,000 lb) bombs to 40 MK–82 (500 lb) bombs would result in a reduction of 313 Level B exposures and 4 Level A exposures.

A detailed description of these changes by species in Level A and Level B exposure at the VACAPES Range Complex is shown in Table 2. While the annual exposures anticipated from the requested changes are less than the amount of take originally authorized as a result of the conservative analyses, the amount of annual take requested remains the same as in the original authorization.

TABLE 2—CHANGES OF MODELED EXPOSURES BY SPECIES AT THE VACAPES RANGE COMPLEX

Species	Original modeled exposure	Revised modeled exposure	Change	Level
MINEX:				
Bottlenose Dolphin	0	2	+2	B
Clymene dolphin	0	2	+2	B
Pantropical spotted dolphin	1	4	+3	B
Pantropical spotted dolphin	0	1	+1	A
BOMBEX:				
Atlantic spotted dolphin	9	7	-2	B
Bottlenose dolphin	17	15	-2	B
Clymene dolphin	31	26	-5	B
Common dolphin	2,059	1,766	-293	B
Pantropical spotted dolphin	64	55	-9	B
Risso's dolphin	11	9	-2	B
Common dolphin	17	15	-2	A
Pantropical spotted dolphin	1	0	-1	A

For the MINEX activities within the JAX Range Complex, the change from 12 20-lb NEW charges to 10 20-lb NEW charges would result in no change in exposure numbers.

For the MISSILEX activities within the JAX Range Complex, the change from 3 Maverick missiles to 10 Maverick missiles would result in an additional 4 Level B exposures.

For the FIREX with IMPASS activities within the JAX Range Complex, the change from 10 events in BB and CC boxes to 5 events in BB and CC boxes and 5 events in the new JAX Deepwater IMPASS Site would result in a reduction of 15 Level B exposures and 1 Level A exposure. This reduction of exposures is mainly due to the lower marine mammal density at the JAX Deepwater IMPASS Site.

A detailed description of these changes by species in Level A and Level B exposure at the JAX Range Complex is shown in Table 3. While the annual exposures anticipated from the requested changes are less than the amount of take originally authorized as a result of the conservative analyses, the amount of annual take requested remains the same as in the original authorization.

TABLE 3—CHANGES OF MODELED EXPOSURES BY SPECIES AT THE JAX RANGE COMPLEX

Species	Original modeled exposure	Revised modeled exposure	Change	Level
MISSILEX:				
Atlantic spotted dolphin	1	5	+4	B
FIREX with IMPASS:				
Atlantic spotted dolphin	23	12	-11	B
Bottlenose Dolphin	10	6	-4	B
Clymene dolphin	1	0	-1	B
Pantropical spotted dolphin	1	2	+1	B
Pilot whale	1	2	+1	B
Risso's dolphin	3	2	-1	B
Atlantic spotted dolphin	1	0	-1	A

Summary of Monitoring, Reporting, and Other Requirements Under the 2010 LOA

Annual Exercise Reports

The Navy submitted their 2010 exercise report within the required timeframes and it is posted on NMFS Web site: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. NMFS has reviewed the report and it contains the information required by the 2010 LOAs. The report lists the amount of training exercises conducted between June 2010 and January 2011. For training exercises conducted at the VACAPES Range Complex, the Navy conducted 77 exercises out of the total of 176 proposed. For training exercises at the JAX Range Complex, the Navy conducted 14 out of 175 exercises proposed. No training exercise was conducted at the Cherry Point Range Complex, though a total of 38 exercises were proposed.

Monitoring and Annual Monitoring Reports

The Navy conducted the monitoring required by the 2010 LOA and described in the Monitoring Plan, which included aerial and vessel surveys of training exercises by marine mammal observers. The Navy submitted their 2010 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy included a summary of their 2010 monitoring effort and results (beginning on page 3 of the monitoring report).

Based on the Navy's monitoring report, approximately 107 cetaceans were sighted from 7 sightings during the MINEX vessel visual survey and FIREX visual survey on August 9 and 10, 2010, respectively. These cetaceans include 65 common dolphins, 12 bottlenose dolphins, 6 Risso's dolphins, 10 Atlantic spotted dolphins, and 14 unidentified cetacean species. None of these animals were expected to be affected because they were all outside the take zones.

In addition, approximately 172 cetaceans were sighted from 11 sightings during the MISSILEX (Maverick) aerial visual survey on August 9, 2010, and during the FIREX aerial visual surveys on October 5 and 6, 2010. These cetaceans include approximately 100 Atlantic spotted

dolphins, 51 bottlenose dolphins, and 21 unidentified cetacean species. Most of the cetaceans were sighted either outside the take zone or before the Navy exercise, and were not expected to be affected. Only one bottlenose dolphin was sighted approximately 68 yards from the vessel during a break between the 1st and 2nd round of FIREX event. No unusual behavior was observed from the bottlenose dolphin, and the area was monitored for 30 minutes after the sighting, without the animal being sighted again, before training activities were resumed.

Integrated Comprehensive Management Program (ICMP) Plan

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and marine observer data, as well as new information from other Navy programs (e.g., research and development), and other appropriate newly published information. The Navy updated its 2010 ICMP Plan and will comply with the Plan. The ICMP may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

NOAA Workshops

In a January 19, 2010, letter to the Council on Environmental Quality, NOAA identified the need for two interrelated workshops on marine mammals and sound in the ocean. To address this commitment, NOAA is convening two parallel, focused, relatively small, and product-driven working groups. One will identify and map cetacean "hot spots", defined as areas of known, or reasonably predictable, biological importance (*i.e.,* for reproduction, feeding, migration) and/or high densities. The second working group will be directed toward developing a comprehensive data collection and analysis plan for describing and predicting underwater sound fields in different areas. The outcomes of these working groups will be integrated and analyzed in a broader follow-on symposium to include a larger audience of scientists, industries, federal agencies, conservation managers, and environmental NGOs. The final products and analyses will provide a more robust, comprehensive, and context-specific biological and acoustic basis by which to inform subsequent management decisions regarding human noise in our oceans. The steering committee has been convened and met for the first time in October 2010. Both working groups had their first meeting in March 2011 in Boston, MA. The working group efforts should take about a year to complete, and we expect the final symposium to be held in early 2012. The results of these working groups will be analyzed by NMFS in an adaptive management context, as related to the three east coast training ranges final rules, and mitigation or monitoring measures may be modified, as appropriate.

Adaptive Management

NMFS and the Navy conducted an adaptive management meeting in October 2010 wherein we reviewed the Navy monitoring results through August 1, 2010, discussed other Navy research and development efforts, and discussed other new information that could potentially inform decisions regarding Navy mitigation and monitoring. Based on the review, NMFS determines that the Navy's current monitoring plans for the VACAPES, JAX, and CHPT range complexes are robust and no changes are warranted.

In terms of the Navy's proposed modification for its future training activities, NMFS conducted a thorough analysis and issued an interim final rule to allow flexibility in the Navy's training program, as long as the effects on marine mammal species and their habitat are within the scope of NMFS' analysis conducted in 2009 for the initial final rules governing authorization of these actions (see Planned Activities for 2011 section above).

Authorization

The Navy complied with the requirements of the 2010 LOAs. Based on our review of the record, NMFS has determined that the marine mammal take resulting from the 2010 military readiness training and research activities falls within the levels previously anticipated, analyzed, and authorized, and was likely lower given the fact that Navy conducted fewer operations in 2010 than originally planned. Further, the level of taking authorized in 2011 for the Navy's training exercises at VACAPES, JAX, and CHPT range complexes is consistent with our previous findings made for the total taking allowed under these range complexes regulations. Finally, the record supports NMFS' conclusion that the total number of marine mammals taken by the 2011 training exercises at VACAPES, JAX, and CHPT range complexes will have no more than a negligible impact on the affected species or stock of marine mammals and will not have an unmitigable adverse impact on the availability of these species or stocks for taking for subsistence uses. Accordingly, NMFS has issued three one-year LOAs for Navy training exercises conducted at these East Coast range complexes from June 5, 2011, through June 4, 2012.

Dated: June 1, 2011.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–14148 Filed 6–7–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Cancellation of the Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Proposed Geothermal Development Program, Naval Air Facility El Centro, Imperial County, CA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the cancellation of its Notice of Intent to prepare a Programmatic Environmental Impact Statement (PEIS) for the proposed Geothermal Development Program, Naval Air Facility El Centro, Imperial County, CA, as published in the **Federal Register**, May 5, 2008 (73 FR 87). It has been determined that preparation of a PEIS is not appropriate at this time when considering the current project scale and stage of geothermal energy development at Superstition Mountain on Naval Air Facility El Centro. The DoN will develop an internal document known as an environmental and operational feasibility study. This internal document will analyze the environmental and operational framework within which a geothermal development may proceed and will provide the DoN with information required to determine the DoN's geothermal energy program needs at Naval Air Facility El Centro. Should geothermal development be indicated as feasible and a project to be developed, the appropriate level of National Environmental Policy Act analysis and process will be performed.

FOR FURTHER INFORMATION CONTACT: Steven Bjornstad, United States Navy Geothermal Program Office (PW–8), Naval Air Weapons Station, 429 East Bowen Road, Mail Stop 4011, China Lake, CA 93555–6108, telephone: 760–939–4048, e-mail: *steven.bjornstad@navy.mil.*

Dated: June 1, 2011.

D. J. Werner,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2011–14066 Filed 6–7–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–006]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver to BSHHome Appliances Corporation from the Department of Energy Residential Clothes Dryer Test Procedure

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD–006) that grants to BSH Home Appliances Corporation (BSH) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the specified models of condensing residential clothes dryer specified in BSH's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, BSH shall be not be required to test and rate its specified models of residential condensing clothes dryer pursuant to this test procedure.

DATES: This Decision and Order is effective June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611; *E-mail: AS_Waiver_Requests@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, Mail Stop GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0103, (202) 586–7796; *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential clothes dryer test procedure at 10 CFR part 430 subpart B, appendix D, for the two models of condensing clothes dryer specified it its petition.

DOE notes that it has promulgated a final test procedure for clothes dryers that provides a mechanism for testing condensing clothes dryers. (76 FR 972, January 6, 2011). Use of this test procedure will be required on the compliance date of any amended standards for clothes dryers. DOE has also published a direct final rule establishing amended standards for clothes dryers, which establishes standards for condensing clothes dryers. (76 FR 22454, April 21, 2011). Absent adverse comment that the Secretary determines may provide a reasonable basis for withdrawal of the direct final rule, DOE has proposed that the standards would become effective on January 1, 2015. (76 FR 26656, May 9, 2011). Use of the final test procedure would also be required on that date.

Issued in Washington, DC, on May 31, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: BSH Home Appliances Corporation (Case No. CD–006).

Background

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes washers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations contain provisions allowing a person to seek a waiver from the test procedure requirements for covered consumer products if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows any interested person who has submitted a petition for waiver to file an application for an interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

On December 28, 2009, BSH filed a petition for waiver from the test procedures applicable to its Bosch WTC82100US and Bosch WTE86300US product models of condensing clothes dryer. The applicable test procedures are contained in 10 CFR part 430, subpart B, appendix D–Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers.BSH seeks a waiver from the applicable test procedure for its Bosch WTC82100US and Bosch WTE86300US product models because, BSH asserts, design characteristics of these models prevent testing according to the currently prescribed test procedure, as described in greater detail in the following paragraph.

In support of its petition, BSH claims that the current clothes dryer test procedures apply only to vented clothes dryers because the test procedures require the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condenser

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. BSH plans to market a condensing clothes dryer for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and condominiums, where construction does not permit the use of external venting.

Assertions and Determinations

BSH's Petition for Waiver

On December 28, 2009, BSH filed a petition for waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D for particular models of condensing clothes dryer. On April 6, 2011, DOE published BSH's petition for waiver and granted BSH an interim waiver from the current test procedure. 76 FR 19087. DOE did not receive any comments on the BSH petition. DOE previously granted Miele Appliance, Inc. (Miele) a waiver from test procedures for two similar condenser clothes dryer models). 60 FR 9330 (Feb. 17, 1995). DOE also granted waivers for the same type of clothes dryer to LG Electronics (73 FR 66641, Nov. 10, 2008), Whirlpool Corporation (74 FR 66334, Dec. 15, 2009), General Electric (75 FR 13122, Mar. 18, 2010) and Miele (76 FR 17637, March 30, 2011). BSH claims that its condenser clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other manufacturers be granted for BSH's Bosch WTC82100US and Bosch WTE86300US models.

Therefore, for the reasons discussed above,and in light of the previous waivers to other manufacturers, DOE grants BSH's petition for waiver from testing of itsBosch WTC82100US and Bosch WTE86300US condenser clothes dryers.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the BSHpetition for waiver. The FTC staff did not have any objections to granting a waiver to BSH.

Conclusion

After careful consideration of all the material that was submitted by BSH and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver submitted by BSH, Inc. (Case No. CD–006) is hereby granted as set forth in the paragraphs below.

(2) BSH shall not be required to test or rate its Bosch WTC82100US and Bosch WTE86300US condensing clothes dryer models on the basis of the test procedures at 10 CFR part 430, subpart B, appendix D.

(3) This waiver shall remain in effect from the date this decision and order consistent with the provisions of 10 CFR 430.27(m).

(4) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify this waiver at any time if it determines the factual basis underlying the petition for waiver is incorrect.

(5) This waiver applies to only those models specifically set out in BSH's petition. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. Grant of this petition for waiver also does not release a petitioner from any applicable certification requirements set forth at 10 CFR Part 429.

Issued in Washington, DC, on May 31, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–14125 Filed 6–7–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9317–2]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or e-mail at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 2409.01; Production Outlook Reports for Un-Registered Renewable Fuel Producers (New Collection); was approved on 05/05/2011; OMB Number 2060–0660; expires on 05/31/2014; Approved without change.

EPA ICR Number 0783.59; Motor Vehicle Emissions (Final Rule for Revisions to Certification of Alternative Fuels); 40 CFR part 85, subparts E and F; 40 CFR 85.1901—85.1908; 40 CFR parts 85 and 86; 40 CFR part 86.1845—86.1848; and 40 CFR part 600; was approved on 05/05/2011; OMB Number 2060–0104; expires on 05/31/2014; Approved without change.

EPA ICR Number 2382.02; Identification of Non-Hazardous Secondary Materials That Are Solid Waste (Final Rule); 40 CFR 260.22 and 260.31(c); was approved on 05/25/2011; OMB Number 2050–0205; expires on 05/31/2014; Approved without change.

EPA ICR Number 2403.02; EG for Sewage Sludge Incinerators; 40 CFR part 60, subparts MMMM and MMMMM; was approved on 05/25/2011; OMB Number 2060–0661; expires on 05/31/2014; Approved without change.

EPA ICR Number 2384.02; NSPS for Commercial and Industrial Solid Waste Incineration (CISWI) units; 40 CFR part 60, subpart CCCC; was approved on 05/25/2011; OMB Number 2060–0662; expires on 05/31/2014; Approved without change.

EPA ICR Number 2265.01; SmartWay Transport Partnership (New Collection); was approved on 05/27/2011; OMB Number 2060–0663; expires on 05/31/2014; Approved without change.

EPA ICR Number 1365.09; Asbestos-Containing Materials in Schools and Asbestos Model Accreditation Plans; 40 CFR part 763, subpart E, Appendix C; was approved on 05/31/2011; OMB Number 2070–0091; expires on 05/31/2014; Approved without change.

EPA ICR Number 0616.10; Compliance Requirement for Child Resistant Packaging (Renewal); 40 CFR part 157; was approved on 05/31/2011; OMB Number 2070–0052; expires on 05/31/2014; Approved without change.

EPA ICR Number 1246.11; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; 40 CFR part 763, subpart G; was approved on 05/31/2011; OMB Number 2070–0072;

expires on 05/31/2014; Approved without change.

EPA ICR Number 2261.02; Safer Detergent Stewardship Initiative (SDSI) Program; was approved on 05/31/2011; OMB Number 2070–0171; expires on 05/31/2014; Approved without change.

Dated: June 2, 2011.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2011–14191 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OA–2006–0074; FRL–9316–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (New)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for two new collections. The ICRs, which are abstracted below, describe the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before July 8, 2011.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OA–2006–0074 to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *docket.oei@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, OEI Docket, Mailcode: 28221T,1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michelle Mandolia, Office of Policy [Mail Code 1807T], Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 202–566–2198; *fax number:* 202–566–2200; *e-mail address: mandolia.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICRs to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On December 22, 2010 (75 FR 80542), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments during the comment period. Any additional comments on these ICRs should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OA–2006–0074, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the OEI Docket is 202–566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI) or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery (New).

ICR numbers: EPA ICR Nos. 2434.01 and 2435.01, OMB Control Nos. 2010–NEW.

ICR Status: These are new ICRs. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under these generic clearances 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.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5.3 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals and Households, Businesses

and Organizations, State, Local or Tribal Governments.

Estimated Number of Respondents (for each ICR): 15,720.

Frequency of Response: Once, On occasion.

Estimated Total Annual Hour Burden (for each ICR): 1,386.

Estimated Total Annual Cost: $0, includes $0 annualized capital or O&M costs.

Changes in the Estimates: These are new ICRs.

Dated: May 31, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–14194 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0353; FRL–9316–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 8, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0353, to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia A. Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0353, which is available for public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Area Sources: Electric Arc Furnace Steelmaking Facilities (Renewal).

ICR Numbers: EPA ICR Number 2277.03, OMB Control Number 2060–0608.

ICR Status: This ICR is scheduled to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions specified at 40 CFR part 63, subpart YYYYY. Owners or operators of the affected facilities must submit a one-time-only report of any physical or operational changes, initial performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of electric arc furnace steelmaking facilities.

Estimated Number of Respondents: 91.

Frequency of Response: Initially, semiannually and occasionally.

Estimated Total Annual Hour Burden: 1,481.

Estimated Total Annual Cost: $138,991, which includes $138,991 in labor costs, no capital/startup costs, and no operating and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease in Respondent labor hours and an increase in labor cost. This is due to the fact that the rule for this subpart is now fully implemented. The previous ICR covered the initial phase of standard implementation which occurred over a three-year period. This ICR shows the labor hour and cost burden after full implementation. There have been no program changes.

Dated: May 31, 2011.

John Moses, Director,

Collection Strategies Division.

[FR Doc. 2011–14196 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2010–0358; FRL–9316–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Portland Cement Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 8, 2011.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2010–0358 to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia A. Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* (202) 564–4113; *fax number:* (202) 564–0050; *e-mail address: williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 2, 2010 (75 FR 30813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2010–0358, which is available for public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, 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 Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752. Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at http://www.regulations.gov, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NSPS for Portland Cement Plants (Renewal).

ICR Numbers: EPA ICR Number 1051.11, OMB Control Number 2060–0025.

ICR Status: This ICR is schedule to expire on July 31, 2011. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain- EPA regulations is consolidated in 40 CFR part 9.

Abstract: The New Source Performance Standards (NSPS) for Portland Cement Plants were proposed on August 17, 1971, promulgated on December 23, 1971, and amended on December 14, 1988, October 17, 2000, and September 9, 2010. Particulate matter emissions from Portland cement plants either cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The control of emissions of particulate matter from Portland cement plants requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Emissions of particulate matter from Portland cement plants are the result of operation of kilns, clinker coolers, raw mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems. These standards rely on the capture of particulate emissions by a baghouse or electrostatic precipitator.

In order to ensure compliance with these standards, adequate reporting and recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 60, subpart F and 40 CFR part 60, Subpart A, as authorized in section 112 and 114(a) of the Clean Air Act. The required information

consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 71 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Portland cement plants.

Estimated Number of Respondents: 118.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 17,666.

Estimated Total Annual Cost: $2,766,659, which includes $1,827,645 in labor costs, $55,194 in capital/startup costs, and $883,820 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no increase in the number of affected facilities, or the number of responses compared to the previous ICR. There is, however, an increase in the estimated hours, and labor burden cost as currently identified in the OMB Inventory of Approved Burdens. This change in burden has occurred because this renewal ICR is being combined with EPA ICR number 2307.02, which resulted in an increase in burden hours and cost.

The combining of this ICR with ICR number 2307.02 also resulted in an increase in capital/startup vs. O&M costs.

Dated: May 31, 2011.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2011–14195 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0476; FRL–8875–2]

Sulfoxaflor; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Arkansas State Plant Board (ASPB), the Louisiana Department of Agriculture and Forestry (LDAF), the Mississippi Department of Agriculture (MDA), and the Tennessee Department of Agriculture (TDA) to use the pesticide sulfoxaflor (CAS Reg. No. 946578–00–3) on cotton to control the tarnished plant bug (TPB), (*Lygus lineolaris*) (*Palisot de Beauvois*), on up to 387,000 acres in Arkansas, 230,000 acres in Louisiana, 467,500 acres in Mississippi, and 325,000 acres in Tennessee. The applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 23, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2011–0476, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2011–0476. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The 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 regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket are listed in the docket index available at *http://www.regulations.gov.* 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 308–9364; *e-mail address: pemberton.libby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The ASPB, the LDAF, the MDA, and the TDA have requested the Administrator to issue specific exemptions for the use of sulfoxaflor on cotton to control the TPB, (*Lygus lineolaris*) (*Palisot de Beauvois*). Information in accordance with 40 CFR part 166 was submitted as part of these requests.

As part of these requests, the Applicants assert that non-chemical tactics only suppress populations of TPB and there are not effective stand-alone practices. Numerous insecticides are registered for use on cotton to control TPB. The Applicants state that varying levels of resistance have been documented to nearly every class of those compounds. The Applicants propose to apply no more than a total of 8.5 oz of the unregistered product, Transform WG, (0.266 lb AI of sulfoxaflor) per acre per year. Up to 387,000 acres in Arkansas, 230,000 acres in Louisiana, 467,500 acres in Mississippi, and 325,000 acres in Tennessee may be treated. The Applicants state that direct yield losses from this pest will range from 1–7.5%.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the specific exemptions requested by the ASPB, the LDAF, the MDA, and the TDA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 26, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2011–14188 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0479; FRL–9317–1]

Proposed Approval of the Central Characterization Project's Remote-Handled Transuranic Waste Characterization Program at Bettis Atomic Power Laboratory

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive remote-handled (RH) transuranic (TRU) waste characterization program implemented by the Central Characterization Project (CCP) at Bettis Atomic Power Laboratory (BAPL) in West Mifflin, Pennsylvania. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of RH TRU debris waste from BAPL–CCP during a series of four inspections, most recently conducted on April 12–13, 2011. By evaluating the waste characterization systems and processes for RH waste that the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program developed, EPA verified whether DOE could adequately characterize RH TRU debris waste, consistent with the

Compliance Criteria. The results of EPA's evaluation of BAPL–CCP's RH TRU waste characterization program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments and issue a final report and approval letter to DOE.

DATES: Comments must be received on or before July 25, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0479, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* to a-and-r-docket@epa.gov
- *Fax:* 202–566–1741
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA–HQ–OAR–2011–0479. The Agency'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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov.* As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar or Ed Feltcorn, Radiation Protection Division, Center for Waste Management and Regulations, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *joglekar.rajani@epa.gov* or *feltcorn.ed@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

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

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

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

DOE is developing WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), TRU waste consists of materials with radionuclides that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both

handled and transported in specially shielded containers. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). EPA initially recertified WIPP on March 29, 2006 (71 FR 18015) and officially recertified the facility most recently on November 18, 2010 (75 FR 70584). Both the certification and recertification decisions determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratories (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The EPA's approval process for waste generator sites is described in 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. EPA's inspection and approval process gives EPA: (a) Discretion in establishing technical priorities; (b) the ability to accommodate variation in the site's waste characterization capabilities; and (c) flexibility in scheduling site waste characterization inspections.

As described in Section 194.8(b), EPA's baseline inspections evaluate each waste characterization process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [§ 194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent waste characterization program changes or expansion should be reported to EPA [§ 194.8(b)(4)]. The Agency is required to assign Tier 1 (T1) and Tier 2 (T2) designations to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site notify EPA of proposed changes to the approved components of an individual waste characterization process (such as radioassay equipment or personnel), and that EPA approve the change before it can be implemented. A waste characterization element with a T2 designation allows the site to implement changes to the approved components of individual waste characterization processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of 194.24(h).

The site inspection and approval process outlined in 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the waste characterization processes EPA inspected at the site, as well as their compliance with 194.24 requirements.

III. Proposed Baseline Compliance Decision

EPA conducted Baseline Inspection No. EPA–BAPL–CCP–RH–04.11–8 of the waste characterization program for RH TRU waste (waste stream BT–1001) in four steps: (1) At Bettis Laboratory (August 30, 2010) to observe the Visual Examination (VE) process; (2) sample collection (September 23, 2010); (3) dose-to-curie (DTC) measurements (December 8, 2010); and, the final baseline inspection at the Agency's Office of Radiation and Indoor Air (ORIA) in Washington, DC, on April 12 and 13, 2011. In accordance with the provisions of 40 CFR 194.8(b), EPA evaluated the site's program to characterize wastes proposed for disposal at WIPP. EPA is seeking public comment on the proposed approval which, when final, will allow BAPL–CCP to characterize and dispose of RH TRU debris waste at WIPP.

The inspection scope included one waste stream—BAPL Waste Stream BT–1001, which consists of 15 containers. Since additional RH TRU waste is not expected to be generated in the foreseeable future from decontamination and decommissioning of hot cells, any additional RH TRU waste stream generated at BAPL beyond the subject of this inspection and proposed approval will require a new baseline inspection and approval.

Waste Stream BT–T001 consists of research and experimental debris generated at Bettis Laboratory from 1973 through 1992. This inspection evaluated: acceptable knowledge (AK) records; dose-to-curie (DTC), in conjunction with radionuclide-specific scaling factors supported by radiochemical analyses of smear samples from the hot cells; and visual examination (VE) to confirm the physical and radiological contents of waste containers. The scope of the inspection was limited to the 15 55-gallon drums containing this waste, which was initially packaged in 15 high-pressure containers (HIPs).

The EPA inspection team identified one finding related to both the AK and radiological characterization processes that BAPL–CCP implemented to characterize RH Waste Stream BT–T–001 (see Attachment C of the accompanying inspection report). In response to this finding, BAPL–CCP revised several key documents associated with both AK and radiological characterization and prepared new documents identified as "freeze files" following the inspection (see Attachment D of the accompanying inspection report). Freeze files contain revisions to certain documents made to address the Agency's issues as objective evidence for the changes being made. These revisions are then processed by BAPL–CCP's document control process to generate an "official," most current version. EPA reviewed these freeze files and determined that they adequately addressed the finding and that the BAPL–CCP RH TRU waste characterization program was technically adequate and appropriately documented.

In several cases, EPA reviewed the modifications to specific documents in the form of "freeze files" serving as objective evidence to address EPA's

finding. As a result of this EPA finding, BAPL–CCP had to revise several documents, which will be forwarded to EPA upon completion of the formal document control process. These freeze files will become final as formal, revised documents and provided to EPA before the end of the public comment period.

Some of the revised documents that BAPL–CCP generated are subject to Bettis Laboratory's Public Utterance process (see Section 7.2 of the accompanying inspection report), which could affect EPA's planned approval schedule. EPA is accepting the BAPL–CCP freeze files as objective evidence to support its proposed approval. EPA expects (and Bettis Laboratory has agreed) that the revised formal documents will (a) Be identical to the freeze files, (b) undergo the Public Utterance Process during EPA's 45-day public comment period window, and (c) be provided to EPA before the end of the comment period for review so EPA can issue its final approval of the BAPL–CCP RH TRU waste characterization program.

EPA's proposed approval for the BAPL–CCP waste characterization program implemented to characterize RH debris waste belonging to Waste Stream BT–T001 includes the following:

(1) The AK process for 15 HIPs of RH retrievably-stored TRU debris designated as BAPL Waste Stream BT–T001

(2) The radiological characterization process using DTC and scaling factors for assigning radionuclide values to Waste Stream BT–T001 that is documented in CCP–AK–BAPL–501, Revision 1, and supported by the calculation packages referenced in this report

(3) The VE process to identify waste material parameters (WMPs) and the physical form of the waste.

Generally, EPA's RH and CH baseline inspections evaluate a site's waste characterization program for technical adequacy and, when approved, the TRU site continues to use the approved program components to characterize additional wastes on an ongoing basis. However, the subject Bettis Laboratory waste stream has been fully characterized and no further waste characterization activities relative to this waste stream will take place. Therefore, this proposed approval is limited to the discrete set of 15 HIPs in BAPL Waste Stream BT–T001. As previously mentioned, a new baseline approval will be necessary for any legacy or newly-generated RH waste at the Bettis Laboratory. BAPL–CCP may not characterize any additional RH waste in the future based on this baseline approval. Consequently, EPA has not listed any Tier 1 (T1) or Tier 2 (T2) designations relative to this waste and the waste characterization components covered by this proposed approval.

EPA must verify compliance with 40 CFR 194.24 before waste may be emplaced in the WIPP, as specified in Condition 3 of EPA's certification of the WIPP's compliance with disposal regulations for TRU radioactive waste [63 **Federal Register** (FR) 27354 and 27405, May 18, 1998]. EPA Baseline Inspection No. EPA–BAPL–CCP–RH–04.11–8 was performed in accordance with the provisions of 40 CFR 194.8(b), as issued in a July 16, 2004, FR notice (Vol. 69, No. 136, pp. 42571–42583).

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of BAPL–CCP in the public docket as described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in Section 1.B. above. EPA will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be included in EPA's public dockets.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at the three EPA WIPP informational docket locations in Albuquerque, Carlsbad, and Santa Fe, New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: June 2, 2011.

Michael P. Flynn,

Director,

Office of Radiation and Indoor Air.

[FR Doc. 2011–14193 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9316–5]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this meeting is to advance discussion of specific topics of unique relevance to agriculture such as effective approaches to addressing water quality issues associated with agricultural production, in such a way as to provide thoughtful advice and useful insights to the Agency as it crafts environmental policies and programs that affect and engage agriculture and rural communities. A copy of the meeting agenda will be posted at *http://epa.gov/ofacmo/frrcc/meetings.htm.*

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Wednesday, June 22, 2011 from 8:30 a.m. (registration at 8 a.m.) until 6 p.m. Eastern Daylight Time, and on Thursday, June 23, 2011 from 8:30 a.m. (registration at 8 a.m.) until 2 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at the Sheraton National Hotel, 900 South Orme Street, Arlington, VA 22204, *Telephone:* (703) 521–1900. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov,* 202–564–7273, US EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than June 13, 2011.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser

at 202–564–7273 or *kaiser.alicia@epa.gov.* To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: May 27, 2011.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. 2011–14192 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0639; FRL–8874–5]

2-(Hydroxymethyl)-2-nitro-1,3-propanediol (Tris Nitro); Notice of Receipt of Requests for Amendments To Terminate Uses; Notice of Withdrawal/Vacation of Order To Amend Registrations To Terminate Certain Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests for amendments by registrants to terminate uses in certain pesticide registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to terminate one or more uses. FIFRA further provides that, before acting on the requests, EPA must publish a notice of receipt of any request in the **Federal Register**. The Agency is also issuing a Notice of Withdrawal/Vacation of the "2-(Hydroxymethyl)-2-nitro-1,3-propanediol (Tris Nitro) Order to Amend Registrations to Terminate Certain Uses" published in the **Federal Register** on September 22, 2010. The Final Order dated September 22, 2010 was issued in error and EPA is withdrawing/vacating that Order.

DATES: The terminations are effective July 8, 2011, unless the Agency receives a written withdrawal request on or before July 8, 2011. The Agency will consider a withdrawal request postmarked no later than July 8, 2011.

Users of these products who desire continued use on crops or sites being terminated should contact the applicable registrant on or before July 8, 2011.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2009–0639, by one of the following methods:

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rebecca Von-Dem Hagen, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–6785; *e-mail address: vondemhagen.rebecca@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0639. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces receipt by the Agency of requests for amendments from a registrant to terminate uses in certain pesticide registrations. These registrations are listed in Table 1 of this unit by registration number, product name, active ingredient, and specific uses requested to be terminated.

In this **Federal Register** Notice, the Agency is also issuing a Notice of Withdrawal/Vacation of the "2-(Hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) Order to Amend Registrations to Terminate Certain Uses" published in the **Federal Register** on September 22, 2010 (75 FR 57780) (FRL–8843–4). In letters dated November 19, 2009, Dow Chemical Company requested to amend to terminate certain uses of its affected Tris Nitro pesticide product registrations. On June 23, 2010 (75 FR 35807) (FRL–8829–3), the Agency published a **Federal Register** Notice announcing receipt of the requests from the registrant to amend to terminate certain uses. After a 30-day comment period in which no comments were received, the Agency published the "2-(Hydroxymethyl)-2-nitro-1,3-propanediol (Tris Nitro); Order to Amend Registrations to Terminate Certain Uses" in the **Federal Register** on September 22, 2010. However, a letter from Dow Chemical Company dated February 25, 2010 requesting to officially withdraw the use termination requests was not processed in a timely manner; therefore, the September 22, 2010 Order, which included all uses listed in Table 1 of this unit in addition to use in or on livestock and poultry premises, was issued in error. In this **Federal Register** notice, the September 22, 2010 Order is being withdrawn/vacated by the Agency.

TABLE 1.—REQUESTS FOR AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product name	Company	Uses to be terminated
464–657	Tris Nitro™ Solid Industrial Bacteriostat.	The Dow Chemical Company.	Use in metalworking fluids; Latex paints; Resin/latex/polymer emulsions; Specialty industrial products.

TABLE 1.—REQUESTS FOR AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product name	Company	Uses to be terminated
464–658	Tris Nitro™ Brand of 50% AqueousTris (hydroxymethyl) nitromethane.	The Dow Chemical Company.	Use in metalworking fluids; Latex paints; Resin/latex/polymer emulsions; Specialty industrial products.
464–663	Tris Nitro™ Brand of 50% Aqueous Tris (hydroxymethyl) nitromethane.	The Dow Chemical Company.	Use in paints, emulsions and thickener solutions; Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water.
464–668	Tris Nitro™ Brand of 25% Aqueous Tris (hydroxymethyl) nitromethane.	The Dow Chemical Company.	Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water.
464–679	Tris Nitro™ Brand	The Dow Chemical Company.	Use in paints, emulsions, and thickener solutions; Use in metalworking fluids; Use as a preservative for packaged emulsions, solutions, or suspensions, such as detergents and polishes containing water; Use in pulp and paper-mill process water systems.

Users of these products who desire continued use on crops or sites being terminated should contact the applicable registrant before July 8, 2011to discuss withdrawal of the application for amendment. This 30-day period will also permit interested members of the public to intercede with registrants prior to the Agency's approval of the terminations.

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit, in sequence by EPA company number.

TABLE 2—REGISTRANT REQUESTING AMENDMENTS TO TERMINATE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company name and address
464	The Dow Chemical Company, 1803 Building, Midland, MI 48674.

III. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to terminate one or more uses. The FIFRA further provides that, before acting on the requests, EPA must publish a notice of receipt of any such requests in the **Federal Register**. Thereafter, the Administrator may approve such requests.

FIFRA section 6(f)(1)(C) requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant requests a waiver of the comment period, or

2. The EPA Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The 2-(hydroxymethyl)-2-nitro-1,3-propanediol (tris nitro) registrant has requested that EPA waive the 180–day comment period. Accordingly, EPA will provide a 30–day comment period on the requests to amend to terminate uses.

IV. Procedures for Withdrawal of Requests

Any registrant who chooses to withdraw a request for use termination must submit the withdrawal in writing to Rebecca von dem Hagen using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than July 8, 2011.

V. Provisions for Disposition of Existing Stocks

If the requests for amendments to terminate uses are granted, the Agency will publish a cancellation order in the **Federal Register**. As part of any cancellation order, the Agency would expect to authorize the registrant to sell or distribute product under the previously approved labeling for a period of 18 months after the effective date of the use terminations, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Antimicrobials, 2-(hydroxymethyl)-2-nitro-1,3-propanediol, Tris Nitro.

Dated: May 26, 2011.

Joan Harrigan-Farrelly,

Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2011–14218 Filed 6–7–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 8, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Paul.Laurenzano@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Paul Laurenzano on (202) 418–1359.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0734.

Title: Sections 53.209, 53.211, and 53.213, Accounting Safeguards and Sections 260 and 271–276 of the Communications Act of 1934, as amended.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 3 respondents; 1,515 responses.

Estimated Time per Response: 0.5 hours–4,593 hours.

Frequency of Response: On occasion and biennial reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154(i), 154(j), 201–205, 218, 220, 260, 271–276, 303(r), and 403.

Total Annual Burden: 72,495 hours.

Total Annual Cost: $1,500,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondent submit confidential information to the FCC. Respondents may, however, request confidential treatment of such information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the full, three year clearance from them. The Commission is requesting OMB approval for an extension (there is no change in the reporting, recordkeeping and/or third party disclosure requirements). There is no change in the Commission's burden estimates.

A Bell Operating Company (BOC) may choose from among three regulatory regimes in its provision of in-region, interstate, interLATA (Local Access and Transport Area) telecommunications services. One of these regimes is the regime set forth in section 272 of the Communications Act of 1934, as amended and the Commission's implementing rules, 47 CFR 272. Under this regime, a BOC and its section 272 affiliate may not jointly own transmission and switching equipment. The separate section 272 affiliate must maintain separate books of account and have separate officers and directors. The separate section 272 affiliate may not obtain credit under arrangements that would permit the creditor to look to the assets of the BOC. The section 272 affiliate must conduct all transactions with the BOC on an arm's length basis, pursuant to the Commission's affiliate transaction rules, with the terms and conditions of such transactions reduced to writing and available for public inspection on the Internet. Section 272(d) states that companies required to maintain a separate affiliate "shall obtain and pay for a Federal/State audit every two years conducted by an independent auditor to determine whether such company has complied with this section and the regulations promulgated under this section, and particularly whether such company has complied with the separate accounting requirements under section 272(b)." These information collection requirements are intended to prevent discrimination, cost misallocation and other anti-competitive conduct by the BOCs.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–14072 Filed 6–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before August 8, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of

time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0095.

Title: Multi-Channel Video Programming Distributors Annual Employment Report, FCC Form 395–A.

Form Number: FCC Form 395–A

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 2,500 respondents; 2,500 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping requirement and annual reporting requirement.

Total Annual Burden: 2,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority is contained in Sections 154 and 634 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: FCC Form 395–A, "The Multi-Channel Video Programming Distributor Annual Employment Report," is a data collection device used to assess industry employment trends and provide reports to Congress. The report identifies employees by gender and race/ethnicity in sixteen job categories. FCC Form 395–A contains a grid which collects data on full and part-time employees and requests a list of employees by job title, indicating the job category and full or part-time status of the position. Every cable entity with 6 or more full-time employees and all Satellite Master Antenna Television Systems (SMATV) serving 50 or more subscribers and having 6 or more full-time employees must complete Form 395–A in its entirety and file it by September 30 each year. However, cable entities with 5 or fewer full-time employees are not required to file but if they do, they need to complete and file only Sections I, II and VIII of the FCC Form 395–A, and thereafter need not file again unless their employment increases.

OMB Control Number: 3060–0176.

Title: Section 73.1510, Experimental Authorizations.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities.

Number of Respondents and Responses: 230 respondents; 230 responses.

Estimated Time per Response: 2.25–5.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 983 hours.

Total Annual Costs: $231,250.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR Section 73.1510 requires that a licensee of an AM, FM, and TV broadcast station to file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal transmission, and the proposed hours and duration of the experimentation. The data are used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation does not cause interference to other broadcast stations.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2011–14073 Filed 6–7–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities, Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before August 8, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number (OMB 3064–0162). A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently-Approved Collection Of Information

Title: Large-Bank Deposit Insurance Programs.

OMB Number: 3064–0162.

Affected Public: Insured depository institutions having at least $2 billion in domestic deposits and either at least: (i) 250,000 Deposit accounts; or (ii) $20 million in total assets.

Estimated Number of Respondents: 159.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response: 80 hours to 75,000 hours per response.

Estimated Total Annual Burden Hours: 312,500–625,000 hours.

General Description of Collection: The FDIC adopted regulations intended to modernize the process of determining the insurance status of each depositor in the event of a depository institution failure. The regulations enable

operations of a large insured depository institution to continue functioning on the day following failure; support the FDIC's efforts to fulfill its legal mandates regarding the resolution of failed insured deposit institutions, and apply to the largest institutions only ($2 billion in domestic deposits or more). More specifically, the regulations require the largest depository institutions to adopt mechanisms that would, in the event of the institution's failure, (1) Provide the FDIC with standard deposit account and customer information, and (2) allow the FDIC to place and release holds on liability accounts, including deposits.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 3rd day of June, 2011.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2011–14099 Filed 6–7–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2011–07]

Filing Dates for the Nevada Special Election in the 2nd Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special party nominating caucuses.

SUMMARY: On May 19, 2011, a Nevada state court ruled in *Nevada Republican Party* v. *State of Nevada,* case no. 11 OC 001471B, that Nevada's Secretary of State may not place members of major or minor political parties on the special general election ballot until candidates are designated by their respective political parties. The Nevada Republican and Democratic state central committees will select their parties' nominees at Special Party Caucuses on June 18, 2011, and June 25, 2011, respectively. Due to this development, the Commission is issuing filing dates for these caucuses.[1] Committees required to file reports in connection with the Republican and Democratic caucuses shall file a 12-day Pre-Caucus report.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; *Telephone:* (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: On May 12, 2011, the Commission approved the filing dates for the Special General Election in the Second Congressional District to fill the U.S. House seat in the Second Congressional District formerly held by Senator Dean Heller to be held on September 13, 2011. When the Commission approved the filing dates for the special general election, the special general election ballot was to be open to all qualified candidates, regardless of party, and the candidate filing deadline for ballot access was May 25, 2011. On May 19, 2011, the First Judicial District Court of Nevada ruled that Nevada's Secretary of State may not place members of major or minor political parties on the special general election ballot until candidates are designated by their respective political parties. The major political parties, Republican and Democratic, will select their nominees for the special general election at Special Party Caucuses on June 18, 2011, and June 25, 2011, respectively, and minor parties will select their nominees at executive committee meetings. Committees required to file reports in connection with the Special Republican Party Caucus on June 18, 2011, or the Special Democratic Party Caucus on June 25, 2011, shall file a 12-day Pre-Caucus Report.

Principal Campaign Committees

Special Republican Party Caucus

All principal campaign committees of candidates who participate in the Nevada Special Republican Party Caucus shall file a 12-day Pre-Caucus Report on June 6, 2011. (See chart below for the closing date for each report).

Note that this report is in addition to the campaign committee's quarterly filing in July. (See chart below for the closing date for each report).

Special Democratic Party Caucus

All principal campaign committees of candidates who participate in the Nevada Special Democratic Party Caucus shall file a 12-day Pre-Caucus Report on June 13, 2011. (See chart below for the closing date for each report).

Note that this report is in addition to the campaign committee's quarterly filing in July. (See chart below for the closing date for each report).

The reporting requirements in connection with the Nevada Special General Election were published in the **Federal Register** on May 23, 2011 (76 FR 29750).

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2011 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Nevada Special Republican Party Caucus or Nevada Special Democratic Party Caucus by the close of books for the applicable report(s). (See chart below for the closing date for each report).

Committees filing monthly that make contributions or expenditures in connection with the Nevada Special Republican Party Caucus or Nevada Special Democratic Party Caucus will continue to file according to the monthly reporting schedule.

The reporting requirements in connection with the Nevada Special General Election were published in the **Federal Register** on May 23, 2011 (76 FR 29750).

Additional disclosure information in connection with the Nevada Special Election may be found on the FEC Web site at *http://www.fec.gov/info/report_dates_2011.shtml.*

Disclosure of Lobbyist Bundling Activity

Campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $16,200 during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

[1] The State of Nevada, through Secretary of State Ross Miller, and the Nevada State Democratic Party filed Notices of Appeal with the Nevada Supreme Court on May 23, 2011, to challenge the district court's decision in *Nevada Republican Party* v. *State of Nevada,* case no. 11 OC 001471B. The Commission cautions that the need for filing dates for these caucuses may be affected by a decision of the Nevada Supreme Court.

CALENDAR OF REPORTING DATES FOR NEVADA SPECIAL ELECTION

Report	Close of books[2]	Reg./cert. & overnight filing mailing deadline	Filing deadline
QUARTERLY FILING POLITICAL COMMITTEES INVOLVED IN THE SPECIAL REPUBLICAN PARTY CAUCUS (06/18/11) MUST FILE:			
Pre-Caucus	05/29/11	06/03/11	06/06/11
July Quarterly	06/30/11	07/15/11	07/15/11
SEMI–ANNUAL FILING POLITICAL COMMITTEES INVOLVED IN THE SPECIAL REPUBLICAN PARTY CAUCUS (06/18/11) MUST FILE:			
Pre-Caucus	05/29/11	06/03/11	06/06/11
Mid-Year	06/30/11	07/31/11	07/31/11
QUARTERLY FILING POLITICAL COMMITTEES INVOLVED IN THE SPECIAL DEMOCRATIC PARTY CAUCUS (06/25/11) MUST FILE:			
Pre-Caucus	06/05/11	06/10/11	06/13/11
July Quarterly	06/30/11	07/15/11	07/15/11
SEMI–ANNUAL FILING POLITICAL COMMITTEES INVOLVED IN THE SPECIAL DEMOCRATIC PARTY CAUCUS (06/25/11) MUST FILE:			
Pre-Caucus	06/05/11	06/10/11	06/13/11
Mid-Year	06/30/11	07/31/11	07/31/11

[2] These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

Dated: June 2, 2011.

On behalf of the Commission.

Steven T. Walther,

Commissioner, Federal Election Commission.

[FR Doc. 2011–14097 Filed 6–7–11; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2011–N–06]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of the Establishment of New Systems of Records, Adoption of a Government-Wide System of Records, Removal of Existing Systems of Records, and notice of Government-Wide Systems of Records previously adopted by the Federal Housing Finance Agency.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act), the Federal Housing Finance Agency (FHFA) gives notice of the proposed establishment of seven new Privacy Act systems of records, the adoption of a government-wide Privacy Act system of records, the removal of four existing Privacy Act systems of records, and notice of twenty-one government-wide Privacy Act systems of records previously adopted by FHFA.

The proposed new systems are: "Mail, Contact, Telephone, and Other Lists" (FHFA–7); "Federal Home Loan Bank Directors" (FHFA–8); "Administrative Grievance Records" (FHFA–9); "Employee Benefits Records" (FHFA–10); "Transit Subsidy Program Records" (FHFA–11); "Parking Program Records" (FHFA–12); and "Freedom of Information Act and Privacy Act Records" (FHFA–13). Two of the proposed new systems, (FHFA–8) and (FHFA–9), will replace systems of records issued by one of FHFA's predecessor agencies, the Federal Housing Finance Board (FHFB) titled "FHFB–4 Federal Home Loan Bank Appointive Director Certification Forms" and "FHFB–3 Administrative Grievance Files."

The new adopted system of records, "Personal Identity Verification Identity Management System" (GSA/GOVT–7), will replace systems of records issued by FHFA's predecessor agencies FHFB and the Office of Federal Housing Enterprise Oversight (OFHEO), titled "FHFB–8 Personal Identify Verification Management System" and "OFHEO–03 Employee Identification Card System."

Notice is given that FHFA previously adopted the following government-wide systems of records: EEOC/GOVT–1 Equal Employment Opportunity in the Federal Government Complaint and Appeals Records; DOL/GOVT–1 Office of Worker's Compensation Programs, Federal Employees' Compensation Act File; DOL/GOVT–2 Job Corps Student Records; DOT/ALL–8 Employee Transportation Facilitation; GSA/GOVT–2 Employment Under Commercial Activities Contracts; EPA/GOVT–2—Federal Docket Management System (FDMS); GSA/GOVT–3 Travel Charge Card Program; GSA/GOVT–4 Contracted Travel Services Program; GSA/GOVT–6 GSA SmartPay Purchase Charge Card Program; GSA/GOVT–8 Excluded Parties List System (EPLS); MSPB/GOVT—1 Appeal and Case Records; OGE/GOVT–1 Executive Branch Public Financial Disclosure Reports and Other Ethics Program Records; OGE/GOVT–2 Confidential Statements of Employment and Financial Interests; OPM/GOVT–1 General Personnel Records; OPM/GOVT–2 Employee Performance File System Records; OPM/GOVT–3 Records of Adverse Actions; OPM/GOVT–5 Recruiting, Examining and Placement Records; OPM/GOVT–6 Personnel Research and Test Validation Records; OPM/GOVT–7 Applicant—Race, Sex, National Origin and Disability Status Records; OPM/GOVT–9 File on Position Classification Appeals, Job Grading Appeals, and Retained Grade or Pay Appeals, and Fair Labor Standard Act (FLSA) Claims and Complaints; OPM/GOVT–10 Employee Medical File System Records; and OSC/GOVT–1 OSC Complaint Litigation and Political Activity Files. Two of the proposed new systems, (FHFA–11) and (FHFA–12), will replace the system of records previously adopted by FHFA titled "DOT/ALL–8 Employee Transportation Facilitation" as these two new systems more accurately reflect the systems of records that FHFA maintains.

Upon the effective date of this notice, the replaced FHFB systems, "FHFB–3" published at 60 FR 46120 (September 5, 1995) and further amended, "FHFB–4" published at 64 FR 14919 (March 29, 1999) and further amended, and "FHFB–8" published at 71 FR 61052 on October 17, 2006; and the replaced OFHEO system "OFHEO–3" published at 63 FR 9007 on February 23, 1998, will be removed.

DATES: The addition of these new systems of records will become effective July 18, 2011 without further notice unless comments necessitate otherwise. FHFA will publish a new notice if in order to review comments the effective date is delayed or if changes are made based on comments received. To be assured of consideration, comments must be received on or before July 8, 2011.

ADDRESSES: Submit comments *only once,* identified by "2011–N–06," using any one of the following methods:

- *E-mail:* Comments to Alfred M. Pollard, General Counsel, may be sent by e-mail to *RegComments@fhfa.gov.* Please include "2011–N–06" in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include "2011–N–06" in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, *Attention:* Comments/2011–N–06, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. Please note that all mail sent to the FHFA via the U.S. Postal Service is routed through a national irradiation facility, a process that can delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, *Attention:* Comments/2011–N–06, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard's Desk, First Floor, on business days between 9 a.m. to 5 p.m.

See **SUPPLEMENTARY INFORMATION** for additional information on submission and posting of comments.

FOR FURTHER INFORMATION CONTACT: Stacy Easter, Privacy Act Officer, *privacy@fhfa.gov* or 202–414–3762, or David A. Lee, Senior Agency Official for Privacy, *privacy@fhfa.gov* or 202–414–3804 (not toll free numbers), Federal Housing Finance Agency, 1700 G Street, NW., Washington DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

Instructions: FHFA seeks public comments on the seven proposed new systems of records and will take all comments into consideration. *See* 5 U.S.C. 552a(e)(4) and (11). In addition to referencing "Comments/2011–N–06," please reference the title and number of the system of records your comment addresses.

Posting and Public Availability of Comments: All comments received will be posted without change on the FHFA Web site at *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of l0 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

II. Introduction

This notice satisfies the Privacy Act requirement that an agency publish a system of records notice in the **Federal Register** when there is an addition to the agency's system of records. Congress has recognized that application of all requirements of the Privacy Act to certain categories of records may have an undesirable and often unacceptable effect upon agencies in the conduct of necessary public business. Consequently, Congress established general exemptions and specific exemptions that could be used to exempt records from provisions of the Privacy Act. Congress also required that exempting records from provisions of the Privacy Act would require the head of an agency to publish a determination to exempt a record from the Privacy Act as a rule in accordance with the Administrative Procedure Act. The Director of FHFA has determined that records and information in these seven new systems of records are not exempt from the requirements of the Privacy Act.

As required by the Privacy Act, 5 U.S.C. 552a(r), and pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (6l FR 6427, 6435 February 20, 1996), FHFA has submitted a report describing the seven new systems of records covered by this notice, to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget.

III. Proposed, Adopted and Removed Systems of Records

The first proposed system is "Mail, Contact, Telephone, and Other Lists" (FHFA–7). The proposed system will contain records related to individuals, including FHFA employees, who submit to FHFA requests for information, subscriptions, guidance, informal advice, complaints, and assistance, and who register for FHFA-related activities and events, such as FHFA-sponsored seminars, training programs, or compliance meetings.

The second proposed system is "Federal Home Loan Bank Directors" (FHFA–8). The proposed system will contain records of certifications of eligibility and qualifications, and information concerning the financial interests of current and former Federal Home Loan Bank (FHLBank) Member and Independent Directors, and actual and potential candidates for election and their immediate families that may render that individual ineligible to serve as either a Member or Independent Director of an FHLBank. The information that is collected and contained in this system has been approved by the Office of Management and Budget under OMB Control No. 2590–0006, "Federal Home Loan Bank Directors (76 FR 5161 January 29, 2011)." This proposed system of records will replace the system of records issued by FHFA's predecessor agency FHFB. The replaced FHFB system, "FHFB–4 Federal Home Loan Bank Appointive Director Certification Forms," was originally published in the **Federal Register** in 1999, *see* 64 FR 14919 (Mar. 29, 1999), and further amended in 2003, *see* 68 FR 39947 (Jul. 3, 2003); and in 2006, *see* 71 FR 61052 (Oct. 17, 2006).

The third proposed system is "Administrative Grievance Records" (FHFA–9). The proposed system will contain records related to individuals, including FHFA employees, who file administrative grievances with FHFA. This proposed system of records will replace the system of records issued by FHFA's predecessor agency FHFB. The replaced FHFB system, "FHFB–3 Administrative Grievance Files," was

originally published in the **Federal Register** in 1995, *see* 60 FR 46120 (Sept. 5, 1995), and further amended in 1999, *see* 64 FR 14919 (Mar. 29, 1999); in 2003, *see* 68 FR 39947 (Jul. 3, 2003); and in 2006, *see* 71 FR 61052 (Oct. 17, 2006).

The fourth proposed system is "Employee Benefits Records" (FHFA–10). This new system will contain records used to support the administration and management of FHFA's employee and other benefit programs.

The fifth proposed system is "Transit Subsidy Program Records" (FHFA–11). The proposed new system will contain records related to FHFA employees who apply for and receive transit subsidy program benefits. FHFA has an agreement with the Washington Metropolitan Transit Authority to provide and maintain transit subsidy related services. This new system will replace the system of records previously adopted by FHFA titled "DOT/ALL–8 Employee Transportation Facilitation."

The sixth proposed system is "Parking Program Records" (FHFA–12). The proposed new system will contain records related to FHFA employees who apply for and receive parking program benefits. FHFA has agreements or contracts with government and commercial entities to provide and maintain parking related services. This new system will also replace the system of records previously adopted by FHFA titled "DOT/ALL–8 Employee Transportation Facilitation."

The seventh proposed system is "Freedom of Information Act and Privacy Act Records" (FHFA–13). The proposed new system will contain records related to individuals who submit Freedom of Information Act (FOIA) and Privacy Act requests and appeals to FHFA.

The adopted system is "Personal Identity Verification Identity Management System" (GSA/GOVT–7). *See* 73 FR 22377 (Apr. 25, 2008). This system will cover all participating FHFA employees, contractor personnel, consultants, and other individuals who require routine, long-term access to FHFA facilities, federal facilities, information technology systems, and networks. The system does not apply to occasional visitors or short-term FHFA employees, contractor personnel, consultants, and other individuals. This adopted system will replace systems of records issued by FHFA's predecessor agencies FHFB and OFHEO, titled "FHFB–8 Personal Identify Verification Management System" and "OFHEO–03 Employee Identification Card System." The FHFB system "FHFB–8" was published in the **Federal Register** at 71 FR 61052 (Oct. 17, 2006); and the OFHEO system "OFHEO–03" was originally published in the **Federal Register** in 1998, *see* 63 FR 9007 (Feb. 23, 1998), and further amended in 2007, *see* 72 FR 52572 (Sept. 14, 2007); and in 2008, *see* 73 FR 36548 (Jun. 27, 2008).

The seven proposed new systems and the routine uses for each are set out in their entirety and described in detail below.

FHFA–7

SYSTEM NAME:

Mail, Contact, Telephone, and Other Lists.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records contain information related to individuals, including FHFA employees, who submit to FHFA requests for information, subscriptions, guidance, informal advice, complaints, and assistance in any format, including but not limited to paper, telephone, and electronic submissions; FHFA employees and contractor personnel assigned to handle such submissions; and individuals who have registered for FHFA-related activities and events, such as FHFA-sponsored seminars, training programs, or compliance meetings and those who have so registered and responded to questionnaires, request forms, and evaluation or feedback forms.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain information relating but not limited to name, title, affiliation, mailing address, Social Security number mortgage loan number, mortgage and banking information, telephone numbers, including mobile and cellular, facsimile number, e-mail address, business affiliation, and other contact and related supporting information provided to FHFA by individuals, including FHFA employees, or derived from other sources covered by this system of records and not currently covered under an existing system of records notice.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

PURPOSE(S):

(1) To track and process submissions to FHFA for requests for information, subscriptions, guidance, informal advice, complaints, and assistance.

(2) To track and process registration for FHFA-related activities and events and any feedback and evaluations from such activities and events.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside FHFA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(2) Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a financial self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) Records in this system may, in the discretion of FHFA, be disclosed to any

individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil litigation, if FHFA has reason to believe that the individual to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

(4) A record or information in this system may be disclosed to any individual with whom FHFA contracts to reproduce, by typing, photocopy or other means, any record within this system for use by FHFA and its employees in connection with their official duties or to any individual who is utilized by FHFA to perform clerical or stenographic functions relating to the official business of FHFA.

(5) Records or information in records contained in this system may be disclosed to members of advisory committees that are created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in connection with their official, designated functions.

(6) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(7) To contractor personnel,, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, paper form, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk, or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: e-mail address, name, or an assigned file number for the purpose of responding to the requestor. Information may additionally be retrieved by other personal identifiers.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Housing Finance Agency at 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, and any alternate work site utilized by FHFA employees or by individuals assisting such employees.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by the individual and/or company making the request. Data may also be added pertaining to the fulfillment of the request. Information may also be obtained from other FHFA records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–8

SYSTEM NAME:

Federal Home Loan Bank Directors.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Federal Home Loan Bank (FHLBank) Directors, and potential candidates for election.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain certifications of eligibility and qualifications, and information concerning the financial interests of current and former FHLBank Member and Independent Directors, actual and potential candidates for election, and their immediate families that may render that individual ineligible to serve as either a Member or Independent Director of a FHLBank.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1427(a) and (b); 12 CFR 1261.5, 1261.7, 1261.10 to 1261.13.

PURPOSE(S):

Records are collected to determine whether FHLBank Directors and potential candidates for election are in compliance with statutory and regulatory eligibility requirements and, in the case of Independent Directors, whether they fulfill certain statutory qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside FHFA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) When (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the

security or integrity of this system or other systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(2) Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local, foreign or a financial self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

(3) Records in this system may, in the discretion of FHFA, be disclosed to any individual during the course of any inquiry or investigation conducted by FHFA, or in connection with civil litigation, if FHFA has reason to believe that the individual to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

(4) A record or information in this system may be disclosed to any individual with whom FHFA contracts to reproduce, by typing, photocopy or other means, any record within this system for use by FHFA and its employees in connection with their official duties or to any individual who is utilized by FHFA to perform clerical or stenographic functions relating to the official business of FHFA.

(5) Records or information in records contained in this system may be disclosed to members of advisory committees that are created by FHFA or by Congress to render advice and recommendations to FHFA or to Congress, to be used solely in connection with their official, designated functions.

(6) Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(7) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format, paper form, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk, or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Records may be retrieved by any of the following: e-mail address, name, or an assigned file number for the purpose of responding to the requestor. Information may additionally be retrieved by other personal identifiers.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Federal Housing Finance Agency at 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006, 1750 Pennsylvania Avenue, NW., Washington, DC 20006, and any alternate work site utilized by FHFA employees or by individuals assisting such employees.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552 or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by the individual and/or the FHLBank. Data may also be added pertaining to the fulfillment of the form. Information may also be obtained from other FHFA records systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

OMB CONTROL NUMBER:

The information that is collected and contained in this system has been approved by the Office of Management and Budget under OMB Control No. 2590–0006, "Federal Home Loan Bank Directors."

FHFA–9

SYSTEM NAME:

Administrative Grievance Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, Office of Human Resources Management, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FHFA employees who have filed a grievance pursuant to FHFA's administrative grievance procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain documents related to grievances, including the written grievance filed by the employee, statements of witnesses, records, documents, e-mails, the report of a

grievance examiner when a grievance examiner is used, statements made by the parties to the grievance, and the agency's decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR part 771.

PURPOSE(S):

Records document grievance proceedings brought pursuant to FHFA's administrative grievance procedures.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) To appropriate federal, state, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation of FHFA employees concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for FHFA;

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FHFA employees;

(11) To the Department of Treasury, Bureau of the Public Debt to provide financial management services and systems, including local and temporary duty travel, involving FHFA employees;

(12) To the Internal Revenue Service and appropriate State and local taxing authorities; and

(13) To appropriate federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12) disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form, electronic format, or magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Records retrieved by name or other personal identifier.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov,* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552, in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by current and former employees, FHFA personnel records, statements and testimony of other individuals, agency decisions, and related correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–10

SYSTEM NAME:

Employee Benefits Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Federal Housing Finance Agency (FHFA), Office of Human Resources Management, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee. FHFA also has an interagency agreement with the U.S. Department of Agriculture, National Finance Center in New Orleans, Louisiana, to provide and maintain payroll, personnel, and related services and systems and with the U.S. Department of Treasury, Bureau of the Public Debt in Parkersburg, West Virginia, to provide and maintain financial management services and systems. FHFA also has agreements with various commercial benefit plan entities to provide employee benefits and related administrative services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers current and former FHFA employees and their spouses, domestic partners, and dependents who are enrolled in, apply for, or participate in one or more of FHFA employee benefit programs including health club applications, health, life, and other insurance programs, and other FHFA-sponsored benefit programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains general enrollment and claim information for FHFA-sponsored programs. As appropriate to the specific program, records contain salary and earnings; name of employee and employee's spouse, domestic partner, and dependents and their gender, birth date, home address (including home phone number, mobile phone number, and home e-mail address), and Social Security number; membership in professional organizations (including membership number); employee locator and emergency contact information (including home, e-mail and office addresses, home and work phone numbers, and other emergency contact information); health, life, vision, and dental information; claims for reimbursement; student loan information; and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

PURPOSE(S):

The records are collected, maintained and used to support the administration and management of FHFA employee and other benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) To appropriate federal, state, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) FHFA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by FHFA or another agency or entity) that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with FHFA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(10) To the Department of Agriculture, National Finance Center to provide personnel, payroll, and related services and systems involving FHFA employees;

(11) To the Department of Treasury, Bureau of the Public Debt to provide financial management services and systems, including local and temporary duty travel, involving FHFA employees;

(12) To the Internal Revenue Service and appropriate State and local taxing authorities;

(13) To appropriate Federal agencies to effect salary or administrative offsets, or for other purposes connected with the collection of debts owed to the United States;

(14) To the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establish and modify orders of child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act, the Federal Parent Locator System and the Federal Tax Offset System;

(15) To the Office of Child Support Enforcement for release to the Social Security Administration for verifying Social security numbers in connection with the operation of the Federal Parent Locator System by the Office of Child Support Enforcement;

(16) To the Office of Child Support Enforcement for release to the Department of Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return; and

(17) To commercial benefit providers, carriers, vendors, contractor personnel, and agents to process claims and provide related administrative services involving FHFA employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12) disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form, electronic format, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Records are retrieved by the name, Social Security number, assigned file number, or by other personal identifier.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or privacy@fhfa.gov in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552 in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by current and former employees, the Office of Human Resources Management, FHFA personnel records, and other sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–11

SYSTEM NAME:

Transit Subsidy Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees who apply for and receive transit subsidy program benefits for use in commuting to and from the official duty station whether by a commercial or public transit systems, or by bicycle. FHFA has an agreement with the Washington Metropolitan Transit Authority to provide and maintain transit subsidy-related services and systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system are completed FHFA transit subsidy benefit application forms and related information. The applications include, but are not limited to, the applicant's name, home address, title, grade, office, work address, phone number and e-mail address, commuting schedule, and transit system(s) used.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

PURPOSE(S):

The records are used to administer the FHFA transit subsidy benefits program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) To appropriate federal, state, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, rules and regulations litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the

individual who is the subject of the record;

(4) To appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government.

(10) To the Washington Metropolitan Transit Authority or other transportation authority to provide transit subsidy benefit related services and systems involving FHFA employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form, electronic format, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Records are indexed and retrieved by employee name, employee identification number, or by other personal identifiers.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 2052, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by current and former FHFA employees as well as information retrieved from official FHFA records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–12

SYSTEM NAME:

Parking Program Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees. For administrative purposes, duplicate systems may exist within FHFA at the duty station of each employee.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

To the extent not covered by any other system, this system covers employees and individuals who apply for and/or receive parking program benefits for use in an FHFA contracted parking facility while commuting to and from work; individuals who car-pool with employees holding such permits; and employees interested in joining a car pool. FHFA has agreements or contracts with government and commercial vendors to provide and maintain parking related services and systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the individual parking application, car pool application, disability parking application, special parking application/authorization, visitor parking requests, and related information. The information on the forms include, but is not limited to, the applicant's name; home address; title; grade; make, year and license number of the individual's vehicle(s); office; work hours; room and telephone (both work and personal) numbers; and arrival and departure times.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Home Loan Bank Act (12 U.S.C. 1421–1449) and Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, *et seq.*), as amended by the Housing and Economic Recovery Act of 2008, Public Law No. 110–289, 122 Stat. 2654 (2008).

PURPOSE(S):

The records are used to administer the parking program, to allocate the limited number of parking spaces among employees and visitors, to facilitate the

formation of car pools with employees who have been issued parking permits, and to provide for the safe use of FHFA facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) To appropriate federal, state, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate federal agencies and other public authorities for use in records management inspections;

(8) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(9) To contractor personnel,, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government; and

(10) To government and commercial vendors that provide parking-related services and systems involving FHFA employees.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form, electronic format, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms or locked file cabinets.

retrievability:

Records are indexed and retrieved by employee name, employee identification number, license tag number, or by other personal identifier .

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Human Resources Management, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 2052, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20052, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

The information is provided by current and former FHFA employees as well as information retrieved from official FHFA records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

FHFA–13

SYSTEM NAME:

Freedom of Information Act and Privacy Act Records.

SECURITY CLASSIFICATION:

Unclassified but sensitive.

SYSTEM LOCATIONS:

Office of General Counsel, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552; 1625 Eye Street, NW., Washington, DC 20006; 1750 Pennsylvania Avenue, NW., Washington, DC 20006; and any alternate work site utilized by employees of the Federal Housing Finance Agency (FHFA) or by individuals assisting such employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted requests for information pursuant to the Freedom of Information Act (FOIA); individuals who have submitted requests for records about themselves

under the provisions of the Privacy Act of 1974; individuals filing an administrative appeal of a denial, in whole or part, of any such requests; and individuals filing a civil action in federal court of a denial, in whole or part, of any such requests.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain (a) Names, addresses, phone numbers, and other personal information supplied by individuals making written requests pursuant to FOIA; (b)names, addresses, phone numbers, Social Security numbers, and other personal identifying information supplied by individuals making written requests to review or requests for amendment of records to the Privacy Act; (c) correspondence to or from the requester; correspondence to or from an individual writing on the requester's behalf; (d) internal FHFA memoranda; memoranda to or from other federal agencies having a substantial interest in the determination of the request; € responses to requests (including for example acknowledgment letters, fee estimate letters, and final determinations); (f) administrative appeals of denials of a FOIA request; (g) administrative appeals of denials of requests for records or requests for amendment of records made pursuant to the Privacy Act; and (h) and civil actions filed in federal court of a denial, in whole or part, of any such requests. These records may contain personal information retrieved in response to a request. **Note:**FOIA and Privacy Act records may contain inquiries and requests regarding any of FHFA's other systems of records subject to the FOIA and Privacy Act, and information about individuals from any of these other systems may become part of this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a), and FHFA implementing regulations, 12 CFR parts 1202 and 1204.

PURPOSE(S):

The records maintained in this system are collected to process requests made under the provisions of FOIA and the Privacy Act. The records are also used by FHFA to prepare reports to the Office of Management and Budget, the Department of Justice, and Congress as required by the FOIA or Privacy Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside FHFA as a routine use as follows:

(1) To appropriate federal, state, and local authorities responsible for investigating or prosecuting a violation of, or for enforcing or implementing a statute, rule, regulation, or order issued, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(2) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when FHFA is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary;

(3) To a congressional office in response to an inquiry made by the congressional office at the request of the individual who is the subject of the record;

(4) To appropriate federal, state, local authorities, and other entities when (a) It is suspected or confirmed that the security or confidentiality of information in the system has been compromised; (b) there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs that rely upon the compromised information; and (c) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(5) To appropriate federal, state, and local authorities in connection with hiring or retaining an individual, conducting a background security or suitability investigation, adjudication of liability, or eligibility for a license, contract, grant, or other benefit;

(6) To appropriate federal, state, and local authorities, agencies, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or corrective actions or grievances or appeals, or if needed in the performance of other authorized duties;

(7) To appropriate federal agencies and other public authorities for use in records management inspections;

(8) To contractor personnel, grantees, volunteers, interns, and others performing or working on a contract, service, grant, cooperative agreement, or project for the Federal Government;

(9) To officials of a labor organization when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions;

(10) To another Federal Government agency having a substantial interest in the determination of the request or for the purpose of consulting with that agency as to the propriety of access or correction of the record in order to complete the processing of requests;

(11) To a third party authorized in writing to receive such information by the individual about whom the information pertains; and

(12) To the Department of the Treasury, federal debt collection centers, other appropriate Federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to FHFA. Disclosure of information contained in these records will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status and history of the debt.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form, electronic format, and magnetic disk or tape. Electronic records are stored in computerized databases. Paper and magnetic disk or tape records are stored in locked file rooms or locked file cabinets.

RETRIEVABILITY:

Electronic media and paper format records are indexed and retrieved by the requester's name or by unique log number assigned to the request. Records sometimes are retrieved by reference to the name of the requester's firm, if any, or the subject matter of the request.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24-hour security guard service. Access is limited to those individuals whose official duties require access. Computerized records are safeguarded through use of access codes and other information technology security measures.

RETENTION AND DISPOSAL:

Paper records and electronic media are retained in accordance with National Archives and Records Administration and FHFA Records Retention and Disposition Schedules. Disposal is by shredding or other appropriate disposal systems.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, FHFA, 1700 G Street, NW., Washington, DC 20552.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 2052, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20052, or *privacy@fhfa.gov* in accordance with the procedures set forth in 12 CFR part 1204.

CONTESTING RECORD PROCEDURES:

Direct requests to contest or appeal an adverse determination for a record to the Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Washington, DC 20552 in accordance with the procedures set forth in 12 CFR part 1204.

RECORD SOURCE CATEGORIES:

Requesters and individuals acting on behalf of requesters, FHFA offices and divisions, referrals to or from other Federal agencies having an interest in the request, and employees processing the requests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

FHFA has or may claim exemptions for several of its other systems of records under 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5) and 12 CFR part 1204. During the processing of a FOIA or Privacy Act request, exempt records from these other systems of records may become part of the case record in this system of records. To the extent that exempt records from other FHFA systems of records are entered or become part of this system, FHFA claims the same exemptions, and any such records compiled in this system of records from any other system of records continues to be subject to any exemption(s) applicable for the records as they have in the primary systems of records of which they are a part.

Dated: May 25, 2011.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2011–14057 Filed 6–7–11; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: June 8, 2011—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Ministry of Transport of the People's Republic of China Request for Adjustment of NVOCC Bond Rider for China Trades—Draft Notice of Inquiry

Closed Session

1. Container Freight Index and Derivatives Working Group—Status Report
2. Staff Briefing on Meetings with Transpacific Stabilization Agreement Representatives and Shipper Representatives

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–14307 Filed 6–6–11; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Consumer Advisory Council; Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 16, 2011. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, June 14, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:15 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- **National Mortgage Servicing Standards**

Members will discuss national standards for residential mortgage loan servicing and provide their views on what principles, policies, and procedures such standards should include. They will also address other issues related to current servicing practices.

- **REO Issues**

Members will discuss issues related to the disposition of real estate owned (REO) properties, such as financial institutions' REO management practices, "first look" programs, and the implementation of the regulation providing Community Reinvestment Act consideration for certain neighborhood stabilization activities.

- **Proposed Rules Regarding Ability to Pay for Mortgage Loans**

Members will discuss the Board's proposed rules under Regulation Z (Truth in Lending Act) that would require creditors to determine a consumer's ability to repay a mortgage loan before extending the credit and establish minimum mortgage underwriting standards.

- **Risk Retention Proposal and "Qualified Residential Mortgages"**

Members will provide their views on a proposed rule that would require sponsors of asset-backed securities to retain at least 5 percent of the credit risk of the assets underlying the securities. They will address the proposed

definition of "qualified residential mortgages," which would not be subject to the rule's requirements.

• **Proposed Rules Regarding Remittance Transfers**

Members will discuss the Board's proposed rule under Regulation E (Electronic Fund Transfer Act) that would create new disclosures and protections for consumers who send remittance transfers to recipients in foreign countries.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, June 3, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–14065 Filed 6–7–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 101 0153]

Grifols, S.A. and Talecris Biotherapeutics Holdings Corp.; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 1, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Grisfols-Talecris, File No. 101 0153" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/grifols-talecris,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Perry (202–326–2331), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 1, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 10, 2011. Write "Grifols-Talecris, File No. 101 0153" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential," as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/grifols-talecris* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write "Grifols-Talecris, File No. 101 0151" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 1, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted from Grifols, S.A. ("Grifols") and Talecris Biotherapeutics Holdings Corp. ("Talecris"), subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") and Decision and Order, and has issued a Complaint and the Order to Maintain Assets ("OMA") contained in the Consent Agreement. The Consent Agreement is designed to remedy the anticompetitive effects resulting from Grifols' proposed acquisition of Talecris (the "Acquisition"). Under the Consent Agreement, Grifols will: (i) Divest the fractionation facility currently owned by Talecris in Melville, New York, to Kedrion S.p.A. ("Kedrion"); (ii) divest plasma collection centers to Kedrion; (iii) divest to Kedrion Talecris' Koate DVI plasma-derived Factor VIII ("pdFVIII") business, including the Koate brand name, in the United States; and (iv) for a seven-year period, manufacture immune globulin ("Ig"), albumin, and Koate for Kedrion to sell in the United States.

The proposed Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the proposed Consent Agreement and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make it final.

On June 6, 2010, Grifols entered into an agreement to acquire Talecris for approximately $3.4 billion in cash and stock. The Commission's Complaint alleges that the Acquisition violates Section 5 of the FTC Act, as amended, 15 U.S.C. 45, and if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act by lessening competition in the U.S. markets for Ig, albumin, and pdFVIII (the "Relevant Products").

II. The Parties

Grifols is a public company, headquartered in Barcelona, Spain. Its bioscience division develops and manufactures human blood plasma-derived products with manufacturing facilities in Barcelona and Los Angeles, California. Grifols entered the U.S. market in 2002, when it acquired the assets of a U.S. manufacturer, Alpha Therapeutics Corporation, and 42 plasma collection centers from SeraCare. Since then, Grifols has acquired additional plasma centers and is now vertically integrated, making it the second largest plasma collector in the world. Grifols employs approximately 6,000 people worldwide and had global 2009 revenues of $1.3 billion.

Talecris is also a public company—owned in part by the private investment firm Cerberus Capital Management, L.P. ("Cerberus")—that specializes in the development, manufacture, and worldwide sale of human blood plasma-derived products. Talecris began its U.S. operations in 2005, when Cerberus acquired Bayer AG's global plasma business and Precision Pharma in the same year. Talecris is headquartered in Research Triangle Park, North Carolina, with additional regional headquarters in Canada and Germany. Like Grifols, Talecris is a vertically integrated company, owning numerous plasma collection centers, as well as manufacturing facilities in Clayton, North Carolina, and Melville, New York. It employs approximately 5,000 people worldwide and had global 2009 revenues of approximately $1.5 billion.

III. Market Structure and Relevant Products

A. Relevant Geographic Market

The relevant geographic market in which to analyze the Acquisition's effects is the United States. Plasma-derived products must be FDA-approved for sale in the United States, which requires that these products be made solely from plasma collected in the United States in FDA-approved collection centers and manufactured in FDA-approved plants. Thus, plasma products not approved for sale in the United States do not provide viable competitive alternatives for U.S. consumers in the face of an increase in price for U.S. products.

B. Relevant Product Markets

i. Ig

Ig is a plasma protein replacement therapy largely used to treat immune deficient patients. The relevant product market for Ig includes all brands, concentrations (*i.e.,* 5% and 10%), formulations (*i.e.,* liquid and lyophilized/powder), and means of administration (*i.e.,* intravenous and subcutaneous). Because intravenous Ig ("IVIG") accounts for the overwhelming majority of Ig sales in the United States, industry participants often refer to the Ig market as the IVIG market. Although IVIG is available in two concentrations (5% and 10%), they are therapeutically equivalent. The main difference is one of convenience: A 10% IVIG requires less volume, meaning treatment typically takes less time. Ig has numerous FDA-approved indications (*e.g.,* primary immunodeficiencies and Chronic Inflammatory Demyelinating Polyneuropathy), and there is a significant amount of off-label use.

Hospitals, physicians, and patients would not switch, and historically have not switched, from Ig products to non-Ig products in response to a small but significant and non-transitory increase in price ("SSNIP"). Although Ig products differ somewhat (*e.g.,* based on sucrose levels, immunoglobulin A content, or concentration), ample evidence demonstrates that the brands and products are largely interchangeable. Grifols and Talecris account for approximately 8.4% and 22.8% of the U.S. Ig market, respectively, and their merger would leave three manufacturers with nearly 100% of current U.S. Ig sales.

ii. Albumin

Physicians use albumin to expand blood volume, prime heart valves during cardiac surgery, treat burn victims, and replace proteins in treating liver failure. In the United States, the parties compete in the sale of two different albumin concentrations: 5% and 25% liquid. The 5% and 25% concentrations have different clinical uses, but if a 5% product is unavailable, hospitals can dilute a 25% product to a 5% concentration if necessary. On the manufacturing side, there are no significant costs associated with shifting production between 5% and 25% albumin, and manufacturers can make such changes in a matter of days. Because competitive conditions—including the number and identity of suppliers—for 5% and 25% albumin solutions are the same, it is appropriate to analyze albumin as a single market comprising both 5% and 25% products.

In most circumstances where it is used, albumin has no viable substitutes. While starches and salines can act as volume expanders like 5% albumin, those non-albumin products cannot substitute for albumin in the great majority of uses and do not meaningfully constrain albumin prices and, hence, are not included in the relevant product market. Even for those

few indications for which there might be a potential alternative therapy, hospitals generally prefer albumin and would not switch from albumin to another product in response to a SSNIP. Grifols and Talecris have U.S. albumin market shares of approximately 13% each, and the Acquisition would leave only four meaningful competitors in that market.

iii. pdFVIII

Physicians use pdFVIII to treat bleeding disorders, namely Hemophilia A and von Willebrand Disease ("VWD"). While both pdFVIII and its non-plasma counterpart, recombinant Factor VIII ("rFVIII"), can be used to treat Hemophilia A, rFVIII and pdFVIII have limited interchangeability and, hence, limited ability to constrain each other's prices. For instance, although rFVIII is the standard of care for previously untreated patients with Hemophilia A (due to the perception that pdFVIII carries an increased risk of viral transmission), evidence suggests that patients using rFVIII are more likely to develop inhibitors—antibodies that impede the treatment's effectiveness. Thus, for some Hemophilia A patients, pdFVIII is the only viable treatment. Likewise, patients with severe VWD are treated with pdFVIII products containing von Willebrand Factor ("VWF"). No recombinant products contain VWF, so those patients also may have no choice but to use pdFVIII.

Clinical considerations, not price, determine whether a particular patient is given pdFVIII or rFVIII, and hospitals would not switch from pdFVIII to rFVIII in response to an increase in the price of pdFVIII. Grifols and Talecris account for approximately 23% and 3.6% of the U.S. pdFVIII market, respectively, and their merger would leave only three meaningful competitors in that market.

IV. Industry Background and the Acquisition's Effects

A decade ago, there was robust competition in the plasma-derived products industry. After supply increases in the early 2000s led to lower prices, suppliers reduced production and plasma collection capacity and began to vertically integrate, placing plasma collection almost entirely in the control of the few remaining firms in the market. Manufacturers also engaged in horizontal consolidation, leading to an industry dominated by three large firms, including Talecris. In the years that followed that consolidation, the Ig market in particular experienced a tightening of supply and dramatic year-over-year price increases.

The relevant markets have characteristics that allow manufacturers to promote stability and rational, coordinated behavior. *Firs*t, the markets are transparent, with firms monitoring each other's collections, output, pricing, and future expansion plans. *Second,* firms have engaged in signaling to limit supply levels and maintain higher prices. *Third,* if a firm were to "break ranks" from a coordinated scheme, the other manufacturers can detect any "cheating" over the course of the long manufacturing period and inflict punishment in other geographic markets. *Fourth,* the relevant markets are characterized by highly inelastic demand, increasing the firms' incentives to coordinate because even a small change in supply can have a large effect on price.

The Acquisition would substantially lessen competition in the relevant markets. It would eliminate actual, direct, and substantial competition between Grifols and Talecris. Moreover, given that each of the relevant markets already is highly concentrated, the Acquisition would facilitate successful coordinated interaction among the few remaining meaningful competitors, leading to reduced supply and higher prices for consumers. In addition, the Acquisition increases the likelihood that consumers would experience lower levels of innovation and service in the markets for the Relevant Products.

V. Entry Conditions

Neither new entry nor expansion sufficient to deter or counteract the Acquisition's anticompetitive effects is likely to occur within two years. The barriers to entering the plasma fractionation industry are extraordinary, with costs reaching hundreds of millions of dollars. Indeed, the barriers are so immense that *de novo* entry is unrealistic in less than five years. For example, an entrant must develop a product and secure all necessary regulatory approvals, with the required clinical trials alone taking up to three years. Additionally, the time and capital investment required to build and obtain regulatory clearance for a fractionation facility are significant, taking four to eight years and costing $100 million or more. Finally, entrants must navigate a substantial body of intellectual property in the field, including trade secrets relating to purification and safety, and must incur substantial product research and development costs before bringing a product to market. Accordingly, new entry by a domestic or foreign firm would not be timely, likely, or sufficient to counteract the Acquisition's anticompetitive effects.

VI. The Consent Agreement

The proposed Consent Agreement requires Grifols to divest certain assets to Kedrion and take other actions to alleviate the Acquisition's effects. In particular, the Consent Agreement expedites the entry of an additional competitor into each of the relevant markets, making a potential industry-wide coordinated scheme more difficult, and limiting the combined firm's ability to raise prices.

Kedrion possesses the resources and ability to be an effective competitor and meaningful constraint on any potential coordination in the industry. Created in 2001, Kedrion is the seventh largest fractionator in the world. Specializing in the development, production, and distribution of plasma-derived products, Kedrion actively sells plasma-derived products in more than 30 countries. Kedrion currently sells IVIG in a number of European and other markets and has started the process for FDA approval of its own IVIG product for sale in the United States. Kedrion also expects final FDA approval to sell a new albumin product in the United States in 2011. It currently operates two plants in Italy and is nearing completion of an expansion to its manufacturing facility in Godollo, Hungary.

Under the Consent Agreement, Grifols will enter into a sale-and-leaseback agreement with Kedrion for Talecris' Melville fractionation facility. Specifically, Kedrion will acquire the Melville facility and lease it back to Grifols for three to four years to ensure continuity of operations; at the end of the lease term, Kedrion can assume Melville operations and fractionate its own plasma. Additionally, Grifols will divest to Kedrion plasma collection centers and sell Kedrion an initial supply of raw plasma, ensuring that Kedrion will have an independent and reliable source of raw plasma.

In addition, Grifols will manufacture and supply Kedrion with FDA-approved and established IVIG, albumin, and pdFVIII products. Kedrion will market and sell private-label versions of Talecris' Gamunex IVIG and Plasbumin albumin for a period of seven years. And Grifols will transfer to Kedrion all commercial agreements and rights to sell Koate pdFVIII in the U.S. market, making Kedrion the sole provider of Koate in the United States. Kedrion will also have the option to purchase the rights to manufacture Koate for sale in the United States.

Through the Consent Agreement, Kedrion will have immediate market access and the ability to supply customers with established products in

all three product markets. Kedrion's presence in the U.S. market will add incremental supply of these life-saving products while still allowing the combined firm to take full advantage of the Acquisition's expected efficiencies. In addition, Kedrion will also have the opportunity to hire Grifols and Talecris employees to facilitate its entry and ensure continuity in the manufacture and sale of its products. By eliminating many of the industry's immense barriers to entry, the Consent Agreement will facilitate Kedrion's current and future entry with its own IVIG and albumin products and position Kedrion to replace the competition lost as a result of the Acquisition.

To ensure that the Commission remains informed about the status of the proposed divestitures, the Consent Agreement also requires the parties to file periodic reports with the Commission until the divestitures are accomplished. Furthermore, the OMA requires that the parties maintain all assets scheduled to transfer to Kedrion and authorizes the Commission to appoint a monitor to oversee the various agreements between Kedrion and Grifols. Under the OMA, Grifols and Talecris must maintain the full economic viability, marketability, and competitiveness of the proposed divested business and assets. This includes, among other things, retaining all rights, title, and interest in the divested assets, maintaining operations in their regular course, and not interfering in Kedrion's hiring of designated Grifols and Talecris employees. If Grifols does not comply with the OMA or any of the Consent Agreement's other terms, the Commission may appoint a divestiture trustee to divest the assets and enter into a product manufacturing agreement with a Commission-approved acquirer.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. It is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

By direction of the Commission, Commissioner Kovacic recused and Commissioner Brill issuing a separate concurring statement.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Julie Brill

I concur in the Commission's decision to issue a complaint against Grifols challenging its acquisition of Talecris. I write separately to express my view that whether to resolve this matter through the proposed consent order is a close call, though I ultimately concur in that decision as well.

The vitally important plasma protein industry has seen considerable consolidation in recent years. Today, only four significant active competitors remain as to immune globulin ("Ig"), the largest product by sales at issue in this merger: Grifols, Talecris, CSL and Baxter.[1] In the meantime, prices have increased substantially. Just two years ago, when CSL tried to buy Talecris, the Commission alleged that these "price increases have been caused by the consolidation of competitors and the resulting increases in concentration."[2] The industry has operated as a tight oligopoly in the words of a 2007 Department of Health and Human Services report, carefully controlling supply, avoiding robust price competition, and engaging in signaling of future competitive moves.[3]

One outgrowth of the supply limitations and coordinated behavior described in the Commission's CSL complaint has been the difficulty safety-net providers have had in obtaining Ig under the 340B Drug Pricing Program. This Congressionally mandated program is designed to provide pharmaceuticals at reduced prices to health care providers serving indigent and other at-risk patients. All too often, however, plasma-derivative manufacturers have not made their products available at statutorily-mandated prices.[4] This subverts Congress's goal of ensuring access to life-saving pharmaceuticals and increases costs to the health care system overall.

Against this backdrop, almost any merger in this industry would merit the significant scrutiny this one has received at the FTC. Although Grifols is today one of the smaller firms in the U.S. market, with a roughly 9% share of Ig sales, it recently launched a new 10% concentration intravenous Ig product that could threaten the industry-leading products offered by Talecris, Baxter and CSL. In addition, as alleged in the Commission's current complaint, the Ig market is highly concentrated and the change in market concentration effected by this merger easily raises a presumption of enhanced market power under the antitrust agencies' 2010 Merger Guidelines.[5] Finally, as also alleged in the complaint, the risk of post-merger coordinated behavior is very real, given the history of coordination in this industry and the fact that the immediate post-merger U.S. Ig market will consist of three firms of roughly equal size. Given these and other significant facts, I strongly support issuance of the Commission's complaint.

Whether the consent order does enough to remedy competition concerns is a much closer call. On the one hand, the consent allows for the near-term introduction of product into the market from a new competitor, Kedrion. The consent should also facilitate Kedrion's entry into the U.S. market with its own Ig product in several years. On the other hand, Grifols will keep 67 of Talecris's 69 plasma collection centers, as well as its own 80 centers, while divesting two to Kedrion. In addition, the Melville, NY, manufacturing plant that Grifols is divesting to Kedrion is a smaller facility that is not currently outfitted to purify fractionated plasma into finished product. While Grifols will fractionate and purify a "Designated Amount of [finished] Product" for Kedrion for several years under the consent order, Kedrion may need to build or purchase a new facility in order to effectively compete over the longer term.[6]

In the end, given the particular facts and circumstances of this matter, I support the consent because it provides some degree of immediate, sure relief to consumers. I expect, though, that the Commission, other Federal and State agencies, and affected purchasers will closely monitor these markets, both as to future proposed consolidations and potential coordinated behavior, including behavior that may adversely impact indigent and other at-risk patients through the critical 340B program.

[FR Doc. 2011–14082 Filed 6–7–11; 8:45 am]

BILLING CODE 6750–01–P

[1] A fifth competitor, Octapharma, withdrew its Ig product from the market in September 2010 due to safety concerns. As the Commission alleges in its complaint, "its future competitive significance is uncertain."

[2] Compl. ¶ 33, *FTC* v. *CSL Ltd.*, No. 09–1000 (D.D.C., filed May 28, 2009), available at *http://www.ftc.gov/os/caselist/0810255/091110cslcerberusunsealedcmplt.pdf.*

[3] *Id.* ¶¶ 37–44.

[4] See, *e.g.,* Public Hospital Pharmacy Coalition, "Access to IVIG by Safety Net Hospitals Participating in the 340B Drug Discount Program" (Sept. 2006), available at *http://www.phpcrx.org/public/documents/pdfs/IVIG_report.pdf.*

[5] The Ig market share and HHI figures in the Commission's complaint date from 2009 and are thus conservative, as they count Octapharma as a market participant, which it currently is not.

[6] *Compare In re Polypore Int'l, Inc.,* 2010–2 Trade Cas. ¶ 77,267, 2010 FTC LEXIS 97, at *108–110 (F.T.C. 2010) (requiring divestiture of second manufacturing plant to ensure that divestiture assets constituted viable ongoing business).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0591]

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

Select Agent Distribution Activity: Request for Select Agent (OMB Control No. 0920–0591 exp. 2/28/2011)—Reinstatement without change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC), officially established as a substructure on July 9, 2010.

Background and Brief Description

The Centers for Disease Control and Prevention is requesting a three year extension to continue data collection under the Select Agent Distribution Activity. The form used for this activity is currently approved under OMB Control No. 0920–0591. The purpose of this data collection is to provide a systematic and consistent mechanism to review requests that come to CDC for Select Agents. The term select agents is used to described a limited group of viruses, bacteria, rickettsia, and toxins that have the potential for use as agents of bioterrorism, inflicting significant morbidity and mortality on susceptible populations.

In light of current terrorism concerns and the significant NIH grant monies directed toward Select Agent research, CDC receives hundreds of requests for Select Agents from researchers. The approximately 900 applicants are required to complete an application form in which they identify themselves and their institution, provide a Curriculum Vitae or biographical sketch, a summary of their research proposal, and sign indemnification and material transfer agreement statements. In this request, CDC is requesting approval for approximately 450 hours; no change from the currently approved burden. The only correction to this data collection request is updating the name of the National Center on the application form. A user fee will be collected to recover costs for materials, handling and shipping (except for public health laboratories). The cost to the respondent will vary based on which agent is requested.

Estimate of Annualized Burden Hours

Respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Researcher	900	1	30/60

Dated: May 31, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–14143 Filed 6–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–11HD]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Daniel Holcomb, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Study of Comprehensive Cancer Control and Tobacco Control Program Partnerships — New — Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Tobacco use remains the leading preventable cause of death in the United States, causing over 443,000 deaths each year and resulting in an annual cost of more than $96 billion in direct medical expenses. According to the latest Report of the Surgeon General (2010), "*How Tobacco Causes Disease,*" damage from tobacco smoke is immediate. Inhaling the over 7,000 chemicals and compounds in tobacco smoke causes immediate and long-term damage and leads to disease, including cancer, and death. The only proven strategy for reducing the risk of tobacco-related morbidity and mortality is to never smoke, or to quit if tobacco use has been initiated.

In 1999, CDC's Office on Smoking and Health (OSH) established the National Tobacco Control Program (NTCP) to encourage coordinated, national efforts to reduce tobacco-related morbidity and mortality. The NTCP provides funding and technical support to Tobacco Control Programs (TCPs) in all 50 states, the District of Columbia, seven tribal support centers, eight U.S. territories or jurisdictions, and six national networks. NTCP awardees implement evidence-

based tobacco control policies and interventions including telephone quitlines to increase tobacco use cessation.

Tobacco control is also a top priority for federally-funded cancer control programs. Currently, 65 organizations are funded through CDC's National Comprehensive Cancer Control Program (NCCCP): all 50 states, the District of Columbia, seven tribes/tribal organizations, and seven U.S. territories/Pacific Island Jurisdictions. NCCCP grantees are charged with establishing NCCCP coalitions, assessing the burden of cancer, and developing and implementing comprehensive cancer control (CCC) plans. The CCC plans address interventions across the cancer continuum from primary prevention to treatment and survivorship. The NCCCP is managed by CDC's Division of Cancer Prevention and Control (DCPC).

CDC recognizes the need for increased collaboration between CCCs and TCPs. Toward this end, CDC plans to conduct a study of current partnership efforts involving NCCCP awardees and NTCP awardees. Information will be collected to improve understanding of the ways in which CCCs and TCPs may collaborate to address cancer and tobacco control, and how these programs utilize their respective networks to cross-promote activities. The Partnership Study will be conducted in seven states that: (1) Are funded through both the NCCCP and the NTCP and (2) have an established relationship between the two programs.

Respondents for the Study of Comprehensive Cancer Control and Tobacco Control Program Partnerships will be state health department leaders, CCC and TCP staff (*e.g.,* program directors, evaluation specialists, media specialists, quitline coordinators), and other stakeholders, such as coalition members. Information will be collected through in-person interviews involving approximately 15 respondents in each state. Respondents will be asked about key aspects of their program's structure and activities, including efforts to coordinate across the CCC–TCP structure and facilitators and/or barriers influencing CCC–TCP collaborations. The questions in each interview will be customized depending on the respondent's role. Each interview will last approximately 45 minutes to one hour.

CDC plans to request OMB approval for one year. The information to be collected in the Partnership Study will be used to develop examples of successful strategies used by selected CCCs and TCPs to cross-collaborate and cross-promote programs/services, and to identify new areas of potential collaboration that may be shared with CDC, other federal agencies, and other CCC and TCP states for replication.

The Partnership Study will complement and extend the usefulness of results to be obtained in a companion study titled "Comparing the Effectiveness of Traditional Evidence-Based Tobacco Cessation Interventions to Newer and Innovative Interventions Used by Comprehensive Cancer Control Programs." Additional information about the companion project will be published in a separate **Federal Register** Notice. Both studies will be funded through the American Recovery and Reinvestment Act of 2009 (ARRA). There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Total number of respondents	No. of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State Health Department Leadership	Interview Guide for Health Department Leadership.	7	1	45/60	5
CCC Programs	Site Visit Preparation	7	1	45/60	5
Interview Guide for CCCs	49	1	1	49	
Tobacco Control Programs	Site Visit Preparation	7	1	45/60	5
Interview Guide for TCPs	49	1	1	49	
Total				113	

Dated: June 1, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–14145 Filed 6–7–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11–11GU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Survey of Rapid Influenza Diagnostic Test (RIDT) Practices in Clinical Laboratories—New—the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Survey of Rapid Influenza Diagnostic Testing Practices in Clinical Laboratories is a national systematic study investigating rapid influenza diagnostic testing practices in clinical

laboratories. The survey will be funded in full by the Office of Surveillance, Epidemiology, and Laboratory Services (OSELS) of the Centers for Disease Control and Prevention (CDC). Influenza epidemics usually cause an average more than 200,000 hospitalizations and 36,000 deaths per year in the U.S. Respiratory illnesses caused by influenza viruses are not easily differentiated from other respiratory infections based solely on symptoms. Also influenza viruses may adversely affect different subpopulations. The effective use of rapid influenza diagnostic testing practices is an important component of the differential diagnosis of influenza-like-illness in both inpatient and outpatient treatment facilities. Test results are used for making decisions about antiviral vs. antibiotic use, and in making admission or discharge decisions. In many cases, rapid influenza tests are the only tests that can provide results while the patient is still present in the facility. Thus, the appropriate use of the tests, and interpretation of test results is critical to the treatment and control of influenza. More than a dozen rapid tests have been approved by the U.S. Food and Drug Administration and are in widespread use. The reliability of rapid influenza tests is influenced by the individual test product used and the setting. Reported sensitivities range from 10–75%; while the median specificities reported are 90–95%. Other factors influencing accuracy are the stage (or duration) of illness when the diagnostic specimen is collected, type and adequacy of the specimen collected, variability in user technique for specimen collection or assay performance, and disease activity in the community. Given these and other collective findings, it is imperative for public health and for response planning that CDC develops sector-specific guidance and effective outreach to the clinicians on appropriate use of RIDT in their practices.

Previous studies by CDC of outpatient facilities showed that clinical laboratories usually perform the rapid tests for emergency departments, and provide results for both inpatient and outpatient treatment. Thus, understanding the use of rapid influenza testing in clinical laboratories, how the laboratories report results to emergency departments and treatment facilities and health departments, and what quality assurance practices are used will guide future efforts of the CDC to develop appropriate influenza testing guidelines and sector-specific training materials for clinicians and improve health outcomes of the American public.

The survey covers basic laboratory demographic characteristics, specimen collection and processing, testing practices, reporting of results to emergency departments and other treatment facilities, reporting results to health departments, quality assurance practices, and methods of receiving updated influenza-related information. The majority of the questions request information about laboratory influenza testing practices.

To date, no systematic study has been conducted to investigate how laboratories use these tests, how they report results, or how they interact with outpatient treatment facilities. The survey will be conducted on a national sample of clinical laboratories. There are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	No. of respondents	No. of responses per respondent	Avg. burden per response (in hrs)	Total burden (in hrs)
Clinical Laboratory Supervisors	Survey of Rapid Influenza Diagnostic Test Practices in Clinical Laboratories.	600	1	30/60	300
Total	.....	.....	.....	.....	300

Dated: June 1, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–14147 Filed 6–7–11; 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): Initial Review

The meeting announced below concerns Strategies to Improve Vaccination Coverage of Children in Child Care Centers (CCCs) and Preschools, Funding Opportunity Announcement (FOA) IP11–006; Strategies to Increase Health Care Providers Use of Population-Based Immunization Information Systems, FOA IP11–008; Effectiveness in an Intervention to Promote a Targeted Vaccination program in the Obstetrician-Gynecologist Setting, FOA IP11–009; initial review.

Correction: The notice was published in the **Federal Register** on April 29, 2011, Volume 76, Number 83, Pages 24031. The place should read as follows:

Place: Holiday Inn Decatur Conference Center, 130 Clairemont Avenue, Decatur, Georgia 30030, *Telephone:* (404)371–0204.

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E00, Atlanta, Georgia 30333, *Telephone:* (404) 498–2293.

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: May 27, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–14202 Filed 6–7–11; 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): Initial Review

The meeting announced below concerns Program to Support New Implementation of State or Territorial Public Health Laboratory Capacity for Newborn Bloodspot Screening of Severe Combined Immune Deficiency (SCID) (U01), Funding Opportunity Announcement (FOA) EH11–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.—5 p.m., July 11, 2011 (Closed).

Place: Intercontinental Hotel Buckhead, 3315 Peachtree Road, NE., Atlanta, Georgia 30326, *Telephone:* (404) 946–9000.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "Program to Support New Implementation of State or Territorial Public Health Laboratory Capacity for Newborn Bloodspot Screening of SCID (U01), FOA EH11–001, initial review."

Contact Person for More Information: J. Felix Rogers, Ph.D., M.P.H., Scientific Review Officer, CDC, 4770 Buford Highway, Mailstop F63, Atlanta, Georgia 30341, *Telephone:* (770) 488–4334.

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: May 27, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–14200 Filed 6–7–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10379]

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB); Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notice.

SUMMARY: This document corrects the information provided for [Document Identifier: CMS–10379] titled "Rate Increase Disclosure and Review Reporting Requirements (45 CFR Part 154)" that was published in the **Federal Register** on June 1, 2011 (76 FR 31613).

FOR FURTHER INFORMATION CONTACT:

William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–13458 of June 1, 2011 (76 FR 31316), we published a Paperwork Reduction Act notice requesting a 30-day public comment period for the information collection request titled "Rate Increase Disclosure and Review Reporting Requirements (45 CFR Part 154)." However, there was a technical error that is identified and corrected in the Correction of Errors section below. The information in this correction notice is effective as if it had been included in the document published June 1, 2011. Accordingly, the information collection requirements are not effective until approved by OMB.

II. Explanation of Error

In FR Doc. 2011–13458 of June 1, 2011 (76 FR 31316), information provided under column 3, between paragraphs 1 and 2, on page 69218, was inadvertently omitted. This notice corrects the omission by adding the appropriate instructions and contact information for individuals seeking copies of the proposed information collection.

III. Correction of Error

In FR Doc. 2011–13458 of June 1, 2011 (76 FR 31613),

page 31614, in the third column, in between the first and second paragraphs, the language is corrected to read as follows:

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Dated: *June 6, 2011.*

Martique Jones,

Director, Regulations Development Group, Division B,

Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–14306 Filed 6–6–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5502–CN]

Medicare Program; Accelerated Development Sessions for Accountable Care Organizations—June 20, 21, and 22, 2011; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the notice published in the May 19, 2011 **Federal Register** entitled "Medicare Program; Accelerated Development Sessions for Accountable Care Organizations—June 20, 21, and 22, 2011."

FOR FURTHER INFORMATION CONTACT: Erica Tibbals, (410) 786–6457.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–12342 of May 19, 2011 (76 FR 28988), there were a number of technical errors that are identified and corrected in the Correction of Errors section.

II. Summary of Errors

We made technical and typographical errors in the May 19, 2011 notice (76 FR 28988 and 28989) which include the following:

- Incorrectly referenced the learning sessions as accelerated development sessions (ADSs) instead of accelerated development learning sessions (ADLSs).
- Made inadvertent errors in our description of the persons who are invited to participate in the in-person session.

• Made inadvertent errors in our description of the ways that organizations can build their capacity as an ACO.

• Made inadvertent errors in our description of the financial goal of the ADLS.

• Inadvertently referenced central standard time instead of central daylight time.

III. Correction of Errors

In FR Doc. 2011–12342 of May 19, 2011 (76 FR 28988), make the following corrections:

1. On page 28988,

a. First column,

(1) In the subject heading, the phrase "Accelerated Development Sessions" is corrected to read "Accelerated Development Learning Sessions".

(2) In the SUMMARY, the paragraph "This notice announces the first of four accelerated development sessions (ADSs) that will provide executives with the opportunity to learn about core functions of an Accountable Care Organization (ACO) and ways to build their organization's capacity to succeed as an ACO. This 3-day, in-person ADS is to help new ACOs deliver better care and reduce costs. We invite all new or newly emerging ACOs to register a team of senior executives to participate." is corrected to read "This notice announces the first of four accelerated development learning sessions (ADLSs) that will provide executives with the opportunity to learn about core functions of an Accountable Care Organization (ACO) and ways to build their organization's capacity to achieve the three part aim of better care for individuals, better health for populations, and lower growth in costs as an ACO. This 3-day, in-person ADLS is to help new ACOs deliver better care and reduce growth in expenditures. We invite all new or newly emerging organizations interested in becoming ACOs to register a team of senior executives to participate."

(3) In the **DATES** section, lines 2 and 3, the phrase "central standard time" is corrected to read "central daylight time".

(4) In the **ADDRESSES** section, line 2, the acronym "ADS" is corrected to read "ADLS".

b. Second column,

(1) Second full paragraph,

(a) Lines 8 and 9, the phrase "save money" is corrected to read "reduce expenditures".

(b) Lines 11 and 12, the phrase "accelerated development sessions (ADSs)" is corrected to read "accelerated development learning sessions (ADLSs)".

(c) Line 20, the acronym "ADSs" is corrected to read "ADLSs".

(d) Line 21, the phrase "quality outcomes" is corrected to read "outcomes".

(2) Last paragraph, line 1, the acronym "ADS" is corrected to read "ADLS".

c. Third column,

(1) First paragraph,

(a) Line 1, the acronym "ADS" is corrected to read "ADLS".

(b) Lines 15 and 16, the phrase "assuming and managing risk" is corrected to read "assuming performance based risk".

(2) Second paragraph, line 10, the phrase "ADS initiative" is corrected to read "accelerated development learning (ADL)".

(3) Third paragraph, line 1, the acronym "ADS" is corrected to read "ADLS".

(4) Last paragraph,

(a) Line 3, the acronym "ADS" is corrected to read "ADLS".

(b) Last line, the acronym "ADS" is corrected to read "ADLS".

2. On page 28989, first column,

(a) First partial paragraph, line 3, the acronym "ADS" is corrected to read "ADLS".

(b) First full paragraph, line 1, the phrase "to the public." is corrected to read "to all new or newly emerging organizations interested in becoming ACOs and all materials from the ADLS in-person sessions will be made publicly available.".

(c) Last paragraph,

(1) Line 1, the acronym "ADSs" is corrected to read "ADLSs".

(2) Line 5, the acronym "ADSs" is corrected to read "ADLSs".

Authority: Section 1115A of the Social Security Act.

Dated: June 2, 2011.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–14078 Filed 6–3–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5501–CN]

Medicare Program; Pioneer Accountable Care Organization Model, Request for Applications; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the notice published in the May 20, 2011 **Federal Register** entitled "Medicare Program; Pioneer Accountable Care Organization Model: Request for Applications."

FOR FURTHER INFORMATION CONTACT: Maria Alexander, (410) 786–4792.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–12383 of May 20, 2011 (76 FR 29249), there was a technical error that has been identified and corrected in the section III. of this notice (Correction of Errors section).

II. Summary of Errors

On page 29250 of the notice in the **DATES** section, we inadvertently requested that the Office of the Federal Register base the application submission deadline on the 60th day after publication of the notice (that is, July 19, 2011) instead of postmarked on or before July 18, 2011 which was noted in the information posted on our Center for Medicare and Medicaid Innovation (CMMI) Web site and in the Pioneer ACO Application. (For more information see *http://innovations.cms.gov/areas-of-focus/seamless-and-coordinated-care-models/pioneer-aco/*.) Therefore, in section III. of this correction notice, we correct this error by inserting the date of the application submission deadline that coincides with the application submission deadline announced in the Request for Application posted on the CMMI Web site, which is postmarked on or before July 18, 2011.

III. Correction of Errors

In FR Doc. 2011–12383 of May 20, 2011 (76 FR 29249), make the following correction:

1. On page 29250, in the DATES section, lines 10 and 11, the sentence "Applications must be received on or before July 19, 2011." is corrected to read "Applications must be postmarked on or before July 18, 2011."

Authority: Section 1115A of the Social Security Act.

Dated: June 2, 2011.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs Centers for Medicare & Medicaid Services.

[FR Doc. 2011–14076 Filed 6–7–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0017]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Voluntary National Retail Food Regulatory Program Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Voluntary National Retail Food Regulatory Program Standards" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 28, 2011 (76 FR 17132), the Agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0621. The approval expires on May 31, 2014. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: June 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–14064 Filed 6–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Notice of Public Meeting; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the notice of public meeting, that appeared in the **Federal Register** of August 9, 2010 (75 FR 47820). In the notice, FDA requested comments to gather stakeholder input on the development of a generic drug user fee program. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments by August 1, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0381, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the "Request for Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4238, Silver Spring, MD 20993, 301–796–4830, *Fax:* 301–847–3541, *e-mail: peter.beckerman@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 9, 2010, 75 FR 47820, FDA published a notice soliciting comment on development of a generic drug user fee program, and indicated an intent to keep the docket open for the duration of its negotiations.

FDA and the industry trade organizations with which it is negotiating have extended the negotiations until the end of July 2011. Consequently, FDA is extending the comment period for the notice until August 1, 2011. The Agency believes this extension allows adequate time for interested persons to submit comments and reflects the Agency's previously-articulated commitment to receiving input from all interested parties.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on 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.

Dated: June 3, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–14120 Filed 6–7–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0012]

Strengthen and Promote the Role of Local Health Departments in Retail Food Safety Regulation (U–50)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of a cooperative agreement between the Center for Food Safety and Applied Nutrition (CFSAN) and the National Association of County and City Health Officials (NACCHO). The goal of the cooperative agreement for CFSAN is to have NACCHO conduct work that will strengthen the role of local health departments and help FDA/CFSAN

promote effective city and county regulatory programs responsible for retail food protection in the United States.

DATES: 1. The application due date is June 15, 2011.

2. The anticipated start date is August 2011.

3. The opening date is June 8, 2011.

4. The expiration date is June 16, 2011.

For Further Information and Additional Requirements Contact:

Scientific/Programmatic Contact: Peter A. Salsbury, Center for Food Safety and Applied Nutrition (HFS–320), Food and Drug Administration, 5100 Paint Branch Parkway, College Park, MD 20740, 301–436–1655.

Grants Management Contact: Gladys Melendez-Bohler, Office of Acquisition and Grant Services (OAGS) (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301–827–7175. *gladys.bohler@fda.hhs.gov*.

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/Food/NewsEvents/default.htm*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Number: RFA–FY–FD–020.

Catalog of Federal Domestic Assistance Number: 93.103.

A. Background

The FDA is responsible for protecting and promoting public heath. The public health focus of the FDA Foods Program integrates a comprehensive, preventative, and risk-based approach to safeguard the American food supply. The goal is to identify potential threats to the food supply and to counteract them before they harm American consumers. CFSAN administers the FDA Foods Program with the assistance of the Office of Regulatory Affairs' (ORA) field offices nationwide.

CFSAN regulates $417 billion worth of domestic food, $49 billion worth of imported foods, and over $60 billion worth of cosmetics sold across state lines. This regulation takes place from the products' point of the United States (U.S.) entry or processing to their point of sale. There are over 377,000 registered food facilities (including approximately 154,000 domestic facilities and 223,000 foreign facilities) that manufacture, process, pack, or hold food consumed by humans or animals in the United States and several thousand cosmetic firms. These figures do not include restaurants, institutional food service establishments, or supermarkets, grocery stores, and other food outlets regulated by almost 3,000 States, and local and tribal agencies that have primary responsibility to regulate the retail food and food service industries in the United States. These state and local agencies are responsible for the inspection and oversight of over 1 million food establishments, restaurants and grocery stores, as well as vending machines, cafeterias, and other outlets in health-care facilities, schools, and correctional facilities. FDA strives to promote the application of science-based food safety principles in retail and food service settings to minimize the incidence of foodborne illness. FDA assists regulatory agencies and the industries they regulate by providing a model Food Code, scientifically-based guidance, training, program evaluation, and technical assistance.

B. Research/Cooperative Investigations and Assessments Objectives

CFSAN's Office of Food Safety (OFS)/Retail Food and Cooperative Programs Coordination Staff (RFCPCS) as part of FDA's National Retail Food Team, works to promote the sharing of best practices, including those regulatory and industry interventions that are targeted at improving the management of food safety practices in the retail setting. CFSAN/OFS desires to work cooperatively with NACCHO to increase partnerships and collaboration with our regulatory partners at local and state health and agriculture departments that represent city and county health departments, to identify best practices and innovative approaches used to implement the FDA Food Code and Voluntary National Retail Food Regulatory Program Standards (Retail Program Standards) and begin to examine the impact they have on the reduction of foodborne illness risk factors. NACCHO has the expertise needed to provide expert advice and recommendations to FDA that can be shared and used by multiple local and state health and agriculture departments to help improve public heath in retail and food service settings.

The Cooperative Agreement with NACCHO will also help FDA examine how the Retail Program Standards can most effectively be integrated with broadening efforts to establish accreditation for health departments as guided by the Public Health Accreditation Board.

Other possible areas for collaboration with NACCHO include working to identify how to improve prevention, performance, and response at the local government level; establishing peer mentoring opportunities that pair up experienced local health department officials who have experience implementing the Retail Program Standards with those who have struggled or are just beginning the process; and doing a comprehensive study to assess the effectiveness of food inspection grading and scoring systems used by local health departments.

C. Eligibility Information

NACCHO is the only national organization representing local health departments, to include county, city, district, metro, and tribal agencies. Membership in NACCHO is limited to the executive officer of the department of health of any local health department. NACCHO supports efforts that protect and improve the health of all people and all communities by promoting national policy, developing resources and programs, seeking health equity, and supporting effective local public health practice and systems.

In performing an internet search for national organizations whose members are local governmental health officials, and whose mission includes efforts to support and work with local health departments to improve food safety and prevent foodborne illness, no other organizations were discovered. There are organizations that represent local boards of health, but no other organization whose membership is comprised of local governmental health officials. NACCHO has been in existence since 1994 and has always been exclusively associated with local health officials.

NACCHO values guide staff and leadership in work to achieve optimal health for all through an effective local governmental presence for public health. NACCHO believes that by incorporating these values with a focus on and commitment to their mission and vision, NACCHO will effectively influence improvements in health status around the country. Another unique aspect of NACCHO is its membership. As governmental health officials, NACCHO is able to join forces with other governmental health officials to improve the effectiveness of public health at the local and state level.

II. Award Information/Funds Available

A. Award Amount

The estimated amount of this cooperative agreement award with NACCHO in fiscal year 2011 will be for up to $400,000 (direct plus indirect costs).

B. Length of Support

This Cooperative Agreement established with NACCHO has the possibility of 4 additional years of support for up to $400,000 per year, subject to the availability of funds. Future year amounts will depend on annual appropriations and successful performance.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov/Food/NewsEvents/default.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm,* for all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Register With Electronic Research Administration (eRA) Commons.

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*.

After you have followed these steps, submit paper applications to the following. Please note that the application should not be submitted through Grants.gov or eRA Commons: Gladys Melendez-Bohler, Office of Acquisition and Grant Services (OAGS) (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301–827–7175, *gladys.bohler@fda.hhs.gov*.

Dated: June 2, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–14059 Filed 6–7–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0008]

Guidance for Industry on Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the availability of a guidance for industry entitled "Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act." The Food and Drug Administration Amendments Act (FDAAA) added new provisions to the Federal Food, Drug, and Cosmetic Act (the FD&C Act) addressing the Agency's treatment of certain citizen petitions and petitions for stay of agency action (collectively, petitions), as well as related applications. The guidance describes how FDA will determine if the new provisions apply to a particular petition and how FDA will determine if a petition would delay approval of a pending abbreviated new drug application (ANDA) or 505(b)(2) application. The guidance also describes how FDA will interpret the requirements that such petitions include a certification and that supplemental information or comments to such petitions include a verification. The guidance also addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the Agency has not yet made a decision on approvability.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the 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. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kimberly K. Thomas, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6223, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Citizen Petitions and Petitions for Stay of Action Subject to Section 505(q) of the Federal Food, Drug, and Cosmetic Act." In the **Federal Register** of January 21, 2009 (74 FR 3611), FDA announced the availability of a draft version of this guidance and provided interested parties an opportunity to submit comments. As described in the January 21, 2009, **Federal Register** notice, the guidance provides information regarding FDA's current thinking on interpreting section 914 of Title IX of FDAAA (Pub. L. 110–85). Section 914 of FDAAA added new section 505(q) to the FD&C Act (21 U.S.C. 355(q)) and governs certain citizen petitions and petitions for stay of Agency action that request that FDA take any form of action related to a pending application submitted under section 505(b)(2) or 505(j) of the FD&C Act. The guidance describes FDA's interpretation of section 505(q) of the FD&C Act regarding how the Agency will determine if: (1) The provisions of section 505(q) addressing the treatment of citizen petitions and petitions for stay of agency action (collectively, petitions) apply to a particular petition and (2) a petition would delay approval of a pending ANDA or a 505(b)(2) application. The guidance also describes how FDA will interpret the provisions of section 505(q) requiring that: (1) A petition includes a certification and (2) supplemental information or comments to a petition include a verification. Finally, the guidance addresses the relationship between the review of petitions and pending ANDAs and 505(b)(2) applications for which the Agency has not yet made a decision on approvability.

The Agency has carefully reviewed and considered the comments it received in response to the draft guidance in developing this final version of the guidance. The Agency has added information in sections III.C and III.D of the guidance to further explain how FDA will apply the certification

and verification requirements of section 505(q) and has also made revisions to clarify aspects of the guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on citizen petitions and petitions for stay of action that are subject to section 505(q) of the FD&C Act. 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. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501–3520). The collections of information in this guidance were approved under OMB control number 0910–0679. This guidance also refers to previously approved collections of information found in FDA regulations and approved under OMB control number 0910–0183 (21 CFR 10.20, 10.30, and 10.35) and OMB control number 0910–0001 (21 CFR 314.54, 314.94, and 314.102).

III. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: *June 2, 2011.*

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–14058 Filed 6–7–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0411]

Bristol-Myers Squibb Co. et al.; Withdrawal of Approval of 70 New Drug Applications and 97 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 70 new drug applications (NDAs) and 97 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in table 1 of this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

TABLE 1

Application No.	Drug	Applicant
NDA 007289	Trigesic and Trigesic with Codeine Tablets	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 008248	Wyamine (mephentermine sulfate) Sulfate Injection	Baxter Healthcare Corp., 2 Esterbrook Lane, Cherry Hill, NJ 08003–4099.
NDA 008834	Tronothane HCl (pramoxine hydrochloride (HCl))	Abbott Laboratories, Dept. PA76/Bldg. AP30–1E, 200 Abbott Park Rd., Abbott Park, IL 60064–6157.
NDA 009182	Gantrisin (sulfisoxazole acetyl)	Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 011835	Hydrodiuril (hydrochlorothiazide (HCTZ)) Tablets	Merck & Co., Inc., P.O. Box 1000, UG2C–50, North Wales, PA 19454.
NDA 011971	Oretic (HCTZ) Tablets, 25 milligrams (mg) and 50 mg	Abbott Laboratories.
NDA 012302	Choloxin (dextrothyroxine sodium) Tablets, 1 mg, 2 mg, 4 mg, and 6 mg.	Do.
NDA 013402	Aldoril (methyldopa/HCTZ) Tablets	Merck & Co., Inc.
NDA 015539	Serax (oxazepam) Capsules and Tablets	Alpharma U.S. Pharmaceuticals Division, c/o King Pharmaceuticals, Inc., 501 Fifth St., Bristol, TN 37620.
NDA 016118	Teslac (testolactone) Tablets	Bristol-Myers Squibb Co.
NDA 016402	Alupent (metaproterenol sulfate) Inhalation Aerosol [1]	Boehringer Ingelheim, 900 Ridgebury Rd., P.O. Box 368, Ridgefield, CT 06877–0368.
NDA 016666	Hippuran (hippuran I–131) Injection	Mallinckrodt Medical Inc., c/o Covidien, 675 McDonnell Blvd., Hazelwood, MO 63042.
NDA 016979	Megace (megestrol acetate) Tablets, 20 mg and 40 mg	Bristol-Myers Squibb Co.
NDA 017015	Pavulon (pancuronium bromide) Injection	Organon USA Inc., c/o Schering-Plough Corp., 2000 Galloping Hill Rd., Kenilworth, NJ 07033–0530.
NDA 017352	Fastin (phentermine HCl) Capsules	GlaxoSmithKline, P.O. Box 13398, Five Moore Dr., Research Triangle Park, NC 27709–3398.

TABLE 1—Continued

Application No.	Drug	Applicant
NDA 017628	Tolectin (tolmetin sodium) Tablets, 200 mg and 600 mg	Ortho-McNeil Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC, 1125 Trenton-Harbourton Rd., Titusville, NJ 08560–0200.
NDA 017920	Tagamet (cimetidine) Tablets, 100 mg, 200 mg, 300 mg, 400 mg, and 800 mg.	GlaxoSmithKline.
NDA 017924	Tagamet (cimetidine) Oral Solution, 300 mg/5 milliliters (mL).	Do.
NDA 017933	Lente Iletin (insulin zinc suspension purified beef-pork)	Eli Lilly and Co., Lilly Corporate Center, Indianapolis, IN 46285.
NDA 017934	Similente Iletin (insulin zinc suspension purified beef-pork).	Do.
NDA 017939	Tagamet (cimetidine) Injection, 150 mg/mL	GlaxoSmithKline.
NDA 018084	Tolectin DS (tolmetin sodium) Capsules	Ortho-McNeil Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC.
NDA 018096	Dextrose and Sodium Chloride Injection USP	Hospira, Inc.
NDA 018118	Lanoxicaps (digoxin) Capsules	GlaxoSmithKline.
NDA 018201	Moduretic (amiloride HCl/HCTZ) Tablets	Merck & Co., Inc.
NDA 018380	Sodium Chloride Irrigation USP	Do.
NDA 018590	Aminocaproic Acid Injection USP, 250 mg/mL	Baxter Healthcare Corp.
NDA 018776	Norcuron (vecuronium bromide) Injection	Organon USA Inc., c/o Schering-Plough Corp.
NDA 018869	Nimotop (nimodipine) Capsules	Bayer Healthcare Pharmaceuticals, Inc., P.O. Box 1000, Montville, NJ 07045.
NDA 019008	Bretylium Tosylate in Dextrose Injection USP	Hospira, Inc., 275 North Field Dr., Bldg. H2, Lake Forest, IL 60045–5046.
NDA 019030	Bretylium Tosylate Injection USP, 50 mg/mL	Hospira, Inc.
NDA 019058	Tenormin (atenolol) Injection, 5 mg/10 mL	AstraZeneca Pharmaceuticals LP, 1800 Concord Pike, P.O. Box 8355, Wilmington, DE 19803–89355.
NDA 019091	Ismo (isosorbide mononitrate) Tablets, 20 mg	Promius Pharma, LLC, 200 Somerset Corporate Blvd., 7th Floor, Bridgewater, NJ 08807.
NDA 019165	Protamine Zinc (insulin zinc suspension beef)	Eli Lilly and Co.
NDA 019168	Lente Insulin (insulin zinc suspension beef)	Do.
NDA 019204	Cartrol (carteolol HCl) Tablets	Abbot Laboratories.
NDA 019377	Humulin L (insulin zinc suspension recombinant human) Injection.	Do.
NDA 019434	Tagamet (cimetidine HCl) in Sodium Chloride Injection, Equivalent to (EQ) 6 mg Base/mL.	GlaxoSmithKline.
NDA 019546	Dynacirc (isradipine) Capsules	SmithKline Beecham Corp., d/b/a GlaxoSmithKline, One Franklin Plaza, 200 North 16th St., Philadelphia, PA 19102.
NDA 019561	Micro-K LS (potassium chloride)	KV Pharmaceutical Co., One Corporate Woods Dr., Bridgeton, MO 63044.
NDA 019571	Humulin U (insulin zinc suspension extended recombinant human) Injection.	Eli Lilly and Co.
NDA 019583	Relafen (nabumetone) Tablets	SmithKline Beecham Corp., c/o GlaxoSmithKline, 2301 Renaissance Blvd., RN210, P.O. Box 61540, King of Prussia, PA 19406.
NDA 019591	Lariam (mefloquine HCl) Tablets, 250 mg	Hoffmann-La Roche Inc.
NDA 019638	Arduan (pipecuronium bromide) Injection	Organon USA Inc., c/o Schering-Plough Corp.
NDA 019735	Floxin (ofloxacin) Tablets	Ortho-McNeil-Janssen Pharmaceuticals, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC, P.O. Box 300, 920 Route 202 South, Raritan, NJ 08869–0602.
NDA 019979	Ticlid (ticlopidine HCl) Tablets	Roche Palo Alto LLC, c/o Hoffmann-La Roche Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 020027	Cardizen (diltiazem HCl) Injection	Biovail Technologies Ltd., On Behalf of Biovail Laboratories International SRL, 700 Route 202/206 North, Bridgewater, NJ 08807.
NDA 020100	Humulin 50/50 (insulin recombinant human and insulin suspension isophane recombinant human).	Eli Lilly and Co.
NDA 020269	Dobutamine HCl in 5% Dextrose Injection	Hospira, Inc.
NDA 020507	Teczem (enalapril maleate/diltiazem maleate) Extended-Release Tablets.	Biovail Technologies, Ltd.
NDA 020548	Flovent (fluticasone propionate) Inhalation Aerosol [1]	GlaxoSmithKline.
NDA 020549	Flovent (fluticasone propionate) Inhalation Powder	Do.
NDA 020668	Lexxel (enalapril maleate and felodipine) Extended-Release Tablets.	AstraZeneca Pharmaceuticals LP.
NDA 020792	Cardizem (diltiazem HCl) Injection	Biovail Technologies, Ltd.
NDA 020906	Etopophos (estoposide phosphate) Injection	Bristol-Myers Squibb Co.
NDA 020939	Diltiazem HCl Extended-Release Capsules, 120 mg, 180 mg, 240 mg, 300 mg, 360 mg, and 420 mg.	Biovail Technologies, Ltd.

TABLE 1—Continued

Application No.	Drug	Applicant
NDA 020961	Vitravene (fomivirsen sodium) Injection	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936–1080.
NDA 020966	Sporanox (itraconazole) Injection	Ortho-McNeil-Janssen Pharmaceuticals, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC.
NDA 021084	Skin Exposure Reduction Paste Against Chemical Warfare Agent (SERPACWA) (polyetrafluoroethylene and perfluoropolymethylisopropyl ether).	U.S. Army Medical Material Development Activity, c/o Office of Surgeon General, 1430 Veterans Dr., Fort Detrick, MD 21702–9234.
NDA 021088	Viadur (leuprolide acetate) Implant	Ortho-McNeil-Janssen Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC.
NDA 021281	Prevacid (lansoprazole)	Takeda Global Research and Development Center, Inc., One Takeda Parkway, Deerfield, IL 60015.
NDA 021435	Amvaz (amlodipine maleate) Tablets, 2.5 mg, 5 mg, and 10 mg.	Dr. Reddy's Laboratories, Inc., 200 Somerset Corporate Blvd., Bldg. II, 7th Floor, Bridgewater, NJ 08807–2862.
NDA 021486	Lidopel (lidocaine HCl and epinephrine) Solution	Empi, Inc., P.O. Box 709, Highway 22 East, Clear Lake, SD 57226.
NDA 021507	Prevacid NapraPac 250, Prevacid NapraPac 375, and Prevacid NapraPac 500 (lansoprazole and naproxen) Tablets.	Takeda Global Research and Development Center, Inc.
NDA 021566	Prevacid I.V. (lansoprazole) Injection	Do.
NDA 021592	Foradil Certihaler (formoterol fumarate) Inhalation Powder.	Novartis Pharmaceuticals Corp.
NDA 021850	Zegerid (omeprazole/sodium bicarbonate/magnesium hydroxide).	Santarus, Inc., 3721 Valley Center Dr., suite 400, San Diego, CA 92130.
ANDA 040013	Lidocaine HCl Injection USP, 1%	Hospira, Inc.
ANDA 040073	Naphazoline HCl Ophthalmic Solution USP, 0.1%	Bausch & Lomb, Inc., 7 Giralda Farms, suite 1001, Madison, NJ 07940.
ANDA 040095	Heparin Sodium Injection USP, 10,000 Units/mL	Hospira, Inc.
ANDA 040224	Chlorpromazine HCl Oral Concentrate USP, 100 mg/mL.	Pharmaceutical Associates, Inc., 201 Delaware St., Greenville, SC 29605.
ANDA 040360	Perphenazine Oral Solution USP, 16 mg/5 mL	Do.
ANDA 040522	Norepinephrine Bitartrate Injection USP, EQ 1 mg (base)/1 mL.	Metrics Pharmaceuticals Ventures, LLC, c/o Pharmaforce Inc., 960 Crupper Ave., Columbus, OH 43229.
NDA 050521	Ceclor (cefaclor) Capsules, 250 mg and 500 mg	Eli Lilly and Co.
NDA 050522	Ceclor (cefaclor) Suspension	Do.
NDA 050560	Cefizox (ceftizoxime sodium) Powder for Injection	Astellas Pharma US, Inc., 3 Parkway North, Deerfield, IL 60015.
ANDA 061394	Principen (ampicillin for oral suspension USP)	Apothecon, Inc., c/o Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000.
ANDA 061886	Trimox (amoxicillin for oral suspension USP), 50 mg/mL, 125 mg/5 mL, and 250 mg/5 mL.	Do.
ANDA 062336	Mutamycin (mitomycin for injection USP) 5 mg, 20 mg, and 40 mg Vials.	Bristol-Myers Squibb Co.
ANDA 062557	Kefzol (cefazolin sodium for injection USP)	Eli Lilly and Co.
ANDA 062563	Erythromycin Lactobionate for Injection USP	Elkins-Sinn, Inc., c/o Baxter Healthcare Corp., 2 Esterbrook Lane, Cherry Hill, NJ 08003–4002.
ANDA 062885	Trimox (amoxicillin for oral suspension USP), 125 mg/5 mL and 250 mg/5 mL.	Apothecon, Inc., c/o Bristol-Myers Squibb Co.
ANDA 062993	Erythromycin Lactobionate for Injection USP, EQ 500 mg (base) and 1 gram (g) (base) Vials.	Baxter Healthcare Corp.
ANDA 063294	Cefizox (ceftizoxime for injection USP), EQ 1 g (base) and 2 g (base) Vials.	Astellas Pharma US, Inc., Three Parkway North, Deerfield, IL 60015–2548.
ANDA 070225	Verapamil HCl Injection USP, 2.5 mg/mL	Luitpold Pharmaceuticals, Inc., One Luitpold Dr., P.O. Box 9001, Shirley, NY 11967.
ANDA 070231	Carbamazepine Tablets USP, 200 mg	Inwood Laboratories, Inc., Subsidiary of Forest Laboratories, Inc., Harborside Financial Center, Plaza Three, suite 602, Jersey City, NJ 07311.
ANDA 070291	Methyldopate HCl Injection USP, 50 mg/mL	Baxter Healthcare Corp.
ANDA 070617	Verapamil HCl Injection USP, 2.5 mg/mL	Luitpold Pharmaceuticals, Inc.
ANDA 070891	Bretylium Tosylate Injection USP, 50 mg/mL	Do.
ANDA 072058	Pancuronium Bromide Injection, 1 mg/mL	Elkins-Sinn, Inc., c/o Baxter Healthcare Corp.
ANDA 072059	Pancuronium Bromide Injection, 2 mg/mL	Do.
ANDA 072060	Pancuronium Bromide Injection, 2 mg/mL	Do.
ANDA 072272	Droperidol Injection USP, 2.5 mg/mL	Hospira, Inc.
ANDA 072335	Droperidol Injection USP, 2.5 mg/mL	Luitpold Pharmaceuticals, Inc.
ANDA 074188	Dipivefrin HCl Ophthalmic Solution USP, 0.1%	Bausch & Lomb, Inc.
ANDA 074320	Etoposide Injection, 20 mg/mL	Hospira, Inc.
ANDA 074351	Etoposide Injection, 20 mg/mL	Do.
ANDA 074353	Cimetidine HCl Injection USP	Luitpold Pharmaceuticals, Inc.

TABLE 1—Continued

Application No.	Drug	Applicant
ANDA 074381	Dobutamine Injection USP, 12.5 mg (base)/mL	Baxter Healthcare Corp.
ANDA 074545	Dobutamine Injection USP, 12.5 mg/mL	Luitpold Pharmaceuticals, Inc.
ANDA 074634	Dobutamine Injection USP, 12.5 mg/mL	Hospira, Inc.
ANDA 074643	Minoxidil Topical Solution, 2%	Bausch & Lomb, Inc.
ANDA 074743	Minoxidil Topical Solution, 2%	Sight Pharmaceuticals, Inc., 7 Giralda Farms, suite 1001, Madison, NJ 07940.
ANDA 074824	Atracurium Besylate Injection USP, 10 mg/mL	Baxter Healthcare Corp.
ANDA 074825	Atracurium Besylate Injection USP, 10 mg/mL	Do.
ANDA 075341	Ketoconazole Tablets USP, 200 mg	AAIPharma Service Corp., 2320 Scientific Park Dr., Wilmington, NC 28405.
ANDA 075456	Enalaprilat Injection, 1.25 mg/mL	Hospira, Inc.
ANDA 075542	Amrinone (inamrinone injection USP) EQ 5 mg/mL	Baxter Healthcare Corp.
ANDA 076617	Fluconazole in Sodium Chloride 0.9% Injection	Hospira, Inc.
ANDA 076656	Fenoldopam Mesylate Injection USP, EQ 10 mg (base)/mL.	Luitpold Pharmaceuticals, Inc.
ANDA 076695	Ondansetron Injection USP, EQ 2 mg (base)/mL	Hospira, Inc.
ANDA 076696	Ondansetron Injection USP, EQ 2 mg (base)/mL	Do.
ANDA 077065	Terbinafine HCl Tablets, EQ 250 mg (base)	Gedeon Richter PLC, c/o Gedeon Richter USA, Inc., 1200 East Ridgewood Ave., Ridgewood, NJ 07450.
ANDA 077333	Amlodipine Besylate Tablets, EQ 2.5 mg (base), 5 mg (base), and 10 mg (base).	Do.
ANDA 077389	Carboplatin Injection	Teva Parenteral Medicines, Inc., 19 Hughes, Irvine, CA 92618.
ANDA 077392	Lamotrigine Tablets, 25 mg, 100 mg, 150, mg, and 200 mg.	Roxane Laboratories, Inc., 1809 Wilson Rd., Columbus, OH 43228.
ANDA 077994	Ironotecan HCl Injection	Sandoz, Inc., 2555 West Midway Blvd., Broomfield, CO 80038–0446.
ANDA 080416	Procaine HCl Injection USP, 1% and 2%	Hospira, Inc.
ANDA 083346	Isoproterenol HCl Injection USP, 0.2 mg/mL	Do.
ANDA 084178	Methyltestosterone Tablets, 5 mg	KV Pharmaceutical Co., One Corporate Woods Dr., Bridgeton, MO 63044.
ANDA 084179	Methyltestosterone Tablets, 25 mg	Do.
ANDA 084312	Methyltestosterone Tablets, 10 mg	Do.
ANDA 084767	Dimenhydrinate Injection USP	Baxter Healthcare Corp.
ANDA 085284	Aminophylline Tablets, 100 mg	KV Pharmaceutical Co.
ANDA 085285	Secobarbital Sodium Capsules, 100 mg	Do.
ANDA 085289	Aminophylline Tablets, 200 mg	Do.
ANDA 085363	Acetaminophen and Codeine Phosphate Tablets, 325 mg/45 mg.	Do.
ANDA 085384	Triprolidine HCl Syrup, 1.25mg/5 mL	Do.
ANDA 085385	Promethazine HCl Syrup, 25 mg/5 mL	Do.
ANDA 085388	Promethazine HCl Syrup, 6.25 mg/5 mL	Do.
ANDA 085466	Brompheniramine Maleate Elixir, 2 mg/5 mL	Do.
ANDA 085492	Acetic Acid with Hydrocortisone Otic Solution, 2%/1%	Do.
ANDA 085493	Acetic Acid Otic Solution, 2%	Do.
ANDA 085551	Hydroxyzine HCl Injection USP, 25 mg/mL and 50 mg/mL.	Baxter Healthcare Corp.
ANDA 085621	Diphenhydramine HCl Elixir, 12.5 mg/5 mL	KV Pharmaceutical Co.
ANDA 085810	Prednisone Tablets, 5 mg	Do.
ANDA 086619	Hydrocortisone Sodium Succinate for Injection USP, EQ 100 mg (base)/Vial.	Baxter Healthcare Corp.
ANDA 086661	Donnatal (phenobarbital, hyoscyamine sulfate, atropine sulfate, scopolamine (HBr)) Elixir.	A.H. Robins Co., c/o Wyeth Pharmaceuticals, Inc., P.O. Box 8299, Philadelphia, PA 19101–8299.
ANDA 086676	Donnatal (phenobarbital, hyoscyamine sulfate, atropine sulfate, scopolamine (HBr)) Tablets.	Do.
ANDA 086677	Donnatal (phenobarbital, hyoscyamine sulfate, atropine sulfate, scopolamine (HBr)) Capsules.	Do.
ANDA 086797	Novocain (procaine HCl injection USP) 10%	Hospira, Inc.
ANDA 086906	Methylprednisolone Sodium Succinate for Injection USP, EQ 40 mg (base), 125 mg (base), 500 mg (base), and 1 g (base) Vials.	Elkins-Sinn, Inc., c/o Baxter Healthcare Corp.
ANDA 087239	Aminophylline Injection USP, 25 mg/mL	Do.
ANDA 087240	Aminophylline Injection USP, 25 mg/mL	Luitpold Pharmaceuticals, Inc.
ANDA 087311	Chlorthalidone Tablets, 25 mg	KV Pharmaceutical Co.
ANDA 087312	Chlorthalidone Tablets, 50 mg	Do.
ANDA 087506	Muro Opcon (naphazoline HCl ophthalmic solution USP, 0.1%).	Bausch & Lomb, Inc.
ANDA 087567	Hydrocortisone Sodium Succinate for Injection USP, EQ 250 mg (base)/Vial.	Baxter Healthcare Corp.
ANDA 087568	Hydrocortisone Sodium Succinate for Injection USP, EQ 500 mg (base)/Vial.	Do.

TABLE 1—Continued

Application No.	Drug	Applicant
ANDA 087569	Hydrocortisone Sodium Succinate for Injection USP, EQ 1 g (base)/Vial.	Do.
ANDA 087584	Potassium Chloride for Injection Concentrate USP	Luitpold Pharmaceuticals, Inc.
ANDA 087601	Aminophylline Injection USP, 25 mg/mL	Hospira, Inc.
ANDA 087956	Vitamin K1 (phytonadione injection emulsion USP), 10 mg/mL.	Do.
ANDA 088279	Meperidine HCl Injection USP, 25 mg/mL	Baxter Healthcare Corp.
ANDA 088280	Meperidine HCl Injection USP, 50 mg/mL	Do.
ANDA 088281	Meperidine HCl Injection USP, 75 mg/mL	Do.
ANDA 088282	Meperidine HCl Injection USP, 100 mg/mL	Do.
ANDA 088326	Lidocaine HCl Injection USP, 1.5%	Hospira, Inc.
ANDA 088331	Lidocaine HCl Injection USP, 2%	Do.
ANDA 088368	Lidocaine HCl Injection USP, 20%	Do.
ANDA 088371	Cyclophosphamide for Injection USP, 100 mg/Vial	Baxter Healthcare Corp.
ANDA 088372	Cyclophosphamide for Injection USP, 200 mg/Vial	Do.
ANDA 088373	Cyclophosphamide for Injection USP, 500 mg/Vial	Do.
ANDA 088374	Cyclophosphamide for Injection USP, 1 g/Vial	Do.
ANDA 089649	Lidocaine HCl and Epinephrine Injection	Hospira, Inc.
ANDA 089703	Prochlorperazine Edisylate Injection USP, EQ 5 mg (base)/mL.	Do.
ANDA 089707	Perphenazine Tablets USP, 2 mg	Ivax Pharmaceuticals Inc., 400 Chestnut Ridge Rd., Woodcliff Lake, NJ 07677.
ANDA 090954	Cromolyn Sodium Oral Solution Concentrate, 100 mg/5 mL.	Pack Pharmaceuticals, LLC, 1110 West Lake Cook Rd., suite 152, Buffalo Grove, IL 60089.

[1] This product was an oral pressurized metered-dose inhaler that contained chlorofluorocarbons (CFCs) as a propellant. CFCs may no longer be used as a propellant for any metaproterenol sulfate or fluticasone propionate metered-dose inhalers (see 75 FR 19213–19241, April 14, 2010; 71 FR 70870–70873, December 7, 2006).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the applications listed in table 1 of this document, and all amendments and supplements thereto, is hereby withdrawn, effective July 8, 2011. Introduction or delivery for introduction into interstate commerce of products without approved new drug applications violates section 301(a) and (d) of the FD&C Act (21 U.S.C. 331(a) and (d)). Drug products that are listed in table 1 of this document that are in inventory on the date that this notice becomes effective (see the **DATES** section) may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: May 31, 2011.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 2011–14164 Filed 6–7–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities

Division of Epidemiology and Disease Prevention; Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities

Announcement Type: New.

Funding Opportunity Number: HHS–2011–IHS–EPI–0001.

Catalog of Federal Domestic Assistance Number: 93.231

DATES: *Key Dates:*

Application Deadline Date: July 15, 2011;

≤*Review Date:* August 16–17, 2011;

Anticipated Start Date: September 16, 2011.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications to establish Tribal Epidemiology Centers serving American Indian/Alaska Native (AI/AN) Tribes and urban Indian communities. This program is managed by the IHS Division of Epidemiology and Disease Prevention (DEDP). This program is authorized under the Snyder Act, 25 U.S.C. 13, and 25 U.S.C. 1621m of the Indian Health Care Improvement Act. To obtain details regarding eligibility, please refer to Section III below.

Background

The Tribal Epidemiology Center (TEC) program was authorized by Congress in 1998 as a way to provide public health support to multiple Tribes and urban Indian communities in each of the IHS Areas. The funding opportunity announcement is open to eligible Tribes, Tribal organizations, intertribal consortia, and urban Indian organizations, including currently funded TECs.

TECs are uniquely positioned within Tribes, Tribal and urban Indian organizations to conduct disease surveillance, research, prevention and control of disease, injury, or disability, and to assess the effectiveness of AI/AN public health programs. In addition, they can fill gaps in data needed for Government Performance and Results Act (GPRA) and Healthy People 2020 measures. Some of the existing TECs have already developed innovative strategies to monitor the health status of Tribes and urban Indian communities, including development of Tribal health registries and use of sophisticated record linkage computer software to correct existing state data sets for racial misclassification. TECs work in partnership with IHS DEDP to provide a more accurate national picture of Indian health status.

TECs provide critical support for activities that promote Tribal self-governance and effective management of Tribal and urban Indian health programs. Data generated locally and analyzed by TECs enable Tribes and urban Indian communities to effectively plan and make decisions that best meet the needs of their communities. In addition, TECs can immediately provide feedback to local data systems which will lead to improvements in Indian health data overall.

As more Tribes choose to operate health programs in their communities, TECs ultimately will provide additional public health services such as disease control and prevention programs. Some existing centers provide assistance to Tribal and urban Indian communities in such areas as sexually transmitted disease control and cancer prevention. They also assist Tribes and urban Indian communities to establish baseline data for successfully evaluating intervention and prevention activities through activities such as conducting Behavioral Risk Factor Surveillance Surveys (BRFSS).

The TEC program will continue to enhance the ability of the Indian health system to collect and manage data more effectively and to better understand and develop the link between public health problems and behavior, socioeconomic conditions, and geography. The TEC program will also support Tribal and urban Indian communities by providing technical training in public health practice and prevention-oriented research and by promoting public health career pathways.

Purpose

The purpose of this cooperative agreement program is to fund Tribes, Tribal and urban Indian organizations, and intertribal consortia to provide epidemiological support for the AI/AN population served by IHS. TEC activities should include, but are not limited to, enhancement of surveillance for disease conditions; research, prevention and control of disease, injury, or disability; assessment of the effectiveness of AI/AN public health programs; epidemiologic analysis, interpretation, and dissemination of surveillance data; investigation of disease outbreaks; development and implementation of epidemiologic studies; development and implementation of disease control and prevention programs; and coordination of activities of other public health authorities in the region. It is the intent of IHS to fund several TECs that will serve Tribes and urban Indian communities in all 12 IHS Administrative Areas.

Each TEC selected for funding will act under a cooperative agreement with the IHS. During funded activities, the TECs may receive Protected Health Information (PHI) for the purpose of preventing or controlling disease, injury or disability, including, but not limited to, reporting of disease, injury, vital events, such as birth or death, and the conduct of public health surveillance, public health investigation, and public health interventions for the Tribal and urban Indian communities that they serve. TECs acting under a cooperative agreement with IHS are public health authorities for which the disclosure of PHI by covered entities is authorized by the Privacy Rule. 45 CFR 164.512(b).

To achieve the purpose of this program, the recipient will be responsible for the activities under item number 1. Recipient Activities and IHS will be responsible for conducting activities under item number 2. IHS Activities.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Funds Available:

The total amount identified for FY 2011 is approximately $4.5 million. Competing and continuation awards issued under this announcement are subject to the availability of funds. In the absence of funding, the agency is under no obligation to fund any awards under this announcement. The program will be awarded for five years with 12 months per budget period. Future year funding levels will be determined based on availability of funds. The average award is approximately $350,000 to $1,000,000, depending on the applicant's score and the size of the area covered by the TEC.

Anticipated Number of Awards:

Approximately 12 awards may be issued under this program announcement.

Project Period:

This will be a 5-year project from September 16, 2011 to September 15, 2016.

Funding Information:

As part of an effort to establish TECs throughout the nation, these funds will be used to support activities on an IHS Area basis. Successful applicants must agree to provide services for all AI/AN populations in the respective IHS Area. Collaborative efforts among Tribal, local, State, and Federal health organizations are encouraged.

Funding will be based on scoring levels from the review process. An example is outlined below. Detailed explanations of Review Criteria are described in Section V.

Review Criteria	Total Points	Points Awarded
Introduction, Current Capacity, and Need for Assistance	25	
Program Objectives-Recipient Activities	35	
Program Evaluation	10	
Organizational Capabilities & Qualification	10	
Behavioral Risk Factor Surveillance Surveys	15	
Budget	5	
Total	100	

Cooperative Agreements will be funded annually during the project period of five years, contingent on required continuation applications with an approved scope of work. Renewals of cooperative agreements will be based on the following:

-
- Satisfactory progress.
- Availability of funds.
- Program priorities of IHS.

Programmatic Involvement:

IHS will have substantial involvement in all of the TECs (See IHS Activities).

Recipient Activities:

a. Assist and facilitate AI/AN communities, Tribes, Tribal organizations, and urban Indian organizations in identifying Tribal and urban Indian community health status priorities for building public health capacity at the local level based on epidemiologic data. Assist and facilitate Tribal and urban Indian communities with implementing and conducting disease surveillance, research, prevention and control of disease, injury, or disability, to assess the effectiveness of AI/AN public health programs, monitoring progress toward

meeting each of the health status objectives, developing and implementing epidemiologic studies that have practical application in improving the health status of constituent communities, reporting of notifiable disease conditions to public health authorities and to local Tribes and urban Indian communities in the region, and address emerging public health and epidemiological issues as identified by Tribal and urban Indian community priorities.

b. Develop and disseminate health specific data and Community Health Profiles (CHPs) based on Tribal and urban Indian community health status priorities as follows:

1. Develop CHPs specific for each Tribal and urban Indian community entity served by the TEC. Provide a dissemination plan that includes a project overview, dissemination goals, and health indicators.

2. Develop a regional CHP encompassing all Tribal and urban Indian communities served by the TEC. Provide a dissemination plan that includes a project overview, dissemination goals, and health indicators.

3. Participate in the national TEC CHP Working Group to develop and implement a national CHP.

c. Recipient will need to maintain outbreak response capacity by:

1. Establishing and maintaining relationships with local authorities (Tribal, County, State, etc.) to be able to participate in outbreak response activities on a national or regional scope.

2. Obligating a minimum of one program staff per year to attend IHS training in either the "Outbreak Response Review" or "Epidemiology Ready" course.

3. Explaining how recipient will collaborate and assist in public health emergencies with the IHS, DEDP, State, local, County, Tribal, and other Federal health authorities.

d. Develop a BRFSS project to evaluate health risk behaviors of AI/AN populations served by the TEC, to include, at a minimum, CDC's "core" BRFSS, as follows:

1. Develop a protocol for conducting the BRFSS;

2. Develop a sampling method and recruitment strategy;

3. Meet with the Tribal Health Director, Health Board, and/or the Tribal Council, as appropriate, for review and approval of the BRFSS project;

4. Obtain IRB approval or exempt status;

5. Develop a training protocol for interviewers for the BRFSS;

6. Develop a database to enter data collected from the BRFSS;

7. Develop a dissemination plan that includes a project overview, dissemination goals, targeted audiences, key messages, details of the dissemination plan and how the plan will be evaluated; and

8. Create a separate budget for the BRFSS project.

e. Establish a Data Sharing Agreement (DSA) with the IHS Area Office that delineates:

1. "Routine" activities for which the TEC will have access to de-identified data from IHS Epidemiology Data Mart/National Data Warehouse (NDW).

2. Activities for which they will need additional permission such as special studies or research involving PHI.

3. Language which outlines compliance with Health Insurance Portability and Accountability Act (HIPAA) and Privacy Act protection.

4. Use of the IHS Epidemiology Data Mart User Tracking System (EDMUTS) by the recipient to track both #1 and #2 above.

5. Use of security measures, including:

- How security measures will be in place for data usage;
- How recipient will be a steward of the data;
- Completion of the IHS/OIT yearly security training and security training required by their respective organization; and
- An annual report on the outcomes of TECs access to IHS data.

f. Participate in national public health priorities and committees, as appropriate, with additional Department of Health and Human Services (HHS) agencies.

g. Explain how recipient will support the IHS Agency's priorities:

1. To renew and strengthen our partnership with Tribes.

2. To bring reform to IHS.

3. To improve the quality of and access to care.

4. To make all our work accountable, transparent, fair and inclusive.

You may access information on IHS priorities via the Internet at the following Web site: *http://www.ihs.gov/PublicAffairs/DirCorner/index.cfm.*

h. Establish an advisory council that can provide overall program direction and guidance. The advisory council should include some members with technical expertise in epidemiology and public health (i.e. state health departments, county health departments, etc.) and representation from the Tribal health and urban Indian health programs served by the TEC.

i. Provide an annual report (no more than 10 pages) at the end of each project year to DEDP.

j. Ensure that TEC staff includes key personnel with appropriate expertise in epidemiology, health sciences, and program management. The TEC must also demonstrate access to specialized expertise such as a doctoral level epidemiologist and/or a biostatistician.

IHS Activities:

a. Provide funded TECs with ongoing consultation and technical assistance to plan, implement, and evaluate each component of the TEC as described under Recipient Activities above. Consultation and technical assistance will include, but not be limited to, the following areas:

1. Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2020 objectives, and other public health issues;

2. Design and implementation of each program component such as surveillance, epidemiologic analysis, outbreak investigation, development of epidemiologic studies, development of disease control programs, and coordination of activities; and

3. Overall operational planning and program management.

b. Coordinate all IHS epidemiologic activities on a national scope including investigation of disease outbreaks and CHPs.

c. Conduct site visits to TECs and/or coordinate TEC visits to IHS to ensure data security; confirm compliance with applicable laws and regulations; assess program activities; and to mutually resolve problems, as needed.

d. Convene an annual TEC meeting for information sharing, problem solving or training.

e. Provide opportunities for training of TEC staff. Examples include: IHS Outbreak Response Review course; Webinars on NDW Technical Assistance; Introduction to SAS; Fellowship opportunities.

III. Eligibility Information

1. Eligibility

AI/AN Tribes, Tribal organizations, and eligible intertribal consortia or urban Indian organizations as defined by 25 U.S.C. 1603(e) may be eligible for a TEC cooperative agreement. Such entities must represent or serve a population of at least 60,000 AI/AN to be eligible as demonstrated by Tribal resolutions or the equivalent documentation from urban Indian clinic directors/Chief Executive Officers (CEOs). Applicants must describe the population of AI/ANs and Tribes that

will be represented. The number of AI/ANs served must be substantiated by documentation describing IHS user populations, United States Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid. An intertribal consortium or urban Indian organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health, and represents the Tribes, AN villages, or urban Indian communities in which it is located. Resolutions from each Tribe, AN village and equivalent documentation from each urban Indian community represented must be included in the application package. Collaborations with IHS Areas, Federal agencies such as the Centers for Disease Control and Prevention (CDC), State, academic institutions or other organizations are encouraged (letters of support and collaboration should be included in the application).

Definitions:

Federally-recognized Indian Tribe means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601, *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. 25 U.S.C. 1603 (d).

Tribal organization means the elected governing body of any Indian Tribe or any legally established organization of Indians which is controlled by one or more such bodies or by a board of directors elected or selected by one or more such bodies or elected by the Indian population to be served by such organization and which includes the maximum participation of Indians in all phases of its activities. 25 U.S.C. 1603(e).

Urban Indian organization means a non-profit corporate body situated in an urban center governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities. 25 U.S.C. 1603(h).

An intertribal consortium or AI/AN organization is eligible to receive a cooperative agreement if it is incorporated for the primary purpose of improving AI/AN health. Collaborations with regional IHS, CDC, State and local health departments, and academic institutions are encouraged. Proper tribal resolutions or equivalent documentation from urban Indian organizations is required.

2. Cost Sharing or Matching

DEDP does not require matching funds or cost sharing.

3. Other Requirements

(a) If an applicant's budget exceeds the highest stated award amount that is outlined within this announcement ($1,000,000.00), that application will not be considered for funding.

(b) A letter of intent is required (See section IV(3)).

(c) Tribal Resolution—A resolution of all Indian Tribes served by the project must accompany the application submission. This can be attached to the electronic application. An Indian Tribe that is proposing a project with other Indian Tribes must include resolutions from all Tribes to be served. Applications by Tribal organizations representing multiple Tribes will not require specific Tribal resolutions if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution. However, all official signed Tribal resolutions must be received by the Division of Grants Management (DGM) prior to the beginning of the Objective Review. If official signed resolutions are not received by August 15, 2011, the application will be considered incomplete, ineligible for review, and returned to the applicant without further consideration. Applicants submitting additional documentation after the initial application submission are required to ensure the information was received by the IHS by obtaining documentation confirming delivery (i.e. FedEx tracking, postal return receipt, etc.).

(d) Urban Indian clinic director/CEO equivalent Letter of Support (LoS)—a LoS from the Clinic Director or CEO of all urban Indian clinics served by the TEC must be provided.

(e) Tribal resolutions supportive of the epidemiology cooperative agreement proposal from the Indian Tribe(s) or urban Indian clinic director/CEO equivalent LoS served by the project must accompany the application and the applicant must demonstrate how these documents meet the minimum requirement of 60,000 AI/AN population to be eligible for the cooperative agreement.

(f) Applications with established data sharing agreements (DSAs) or statements acknowledging the importance of future DSAs from IHS/Tribal/Urban Indian (I/T/Us) will be given priority in scoring. Likewise, applicants with established DSAs with respective IHS Area Offices will be given priority in scoring. DSAs will be scored within the "Program Objectives" (See Review Criteria in Section II).

(g) Non-profit organizations must provide proof of non-profit status. The applicant must submit a current valid Internal Revenue Service (IRS) tax exemption certificate or a copy of the 501(c)(3) form, as proof of status.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and instructions may be located at *http://* www.Grants.gov or

http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.

2. Content and Form Application Submission

Documents for all applications include:

- Application forms:
  - SF–424.
  - SF–424A.
  - SF–424B.
- Table of Contents.
- Program Executive Summary (one page or less).
- Program Narrative (must not exceed 10 single-spaced pages. See Section IV(2)(a)).
- Line-item budget.
- Budget narrative (must be single-spaced).
- Program Objectives(s) to include a spreadsheet with Objective Time-Line, Approach, and Results & Benefits.
- Applicant's organizational capabilities addressing Recipient's Activities.
- Organizational chart.
- Position Descriptions and Biographical sketches for all key personnel.
- Data Sharing Agreements (if applicable).
- Tribal Resolutions or equivalent from urban Indian clinic directors/CEOs.
- Letters of support from collaborating agencies.
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Map of the areas to benefit from the program.
- Disclosure of Lobbying Activities (SF–LLL).
- Documentation of current OMB A–133 required Financial Audit.

Acceptable forms of documentation include:

- E-mail confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Website:*http://harvester.census.gov/fac/dissem/accessoptions.html?submit=Retrieve+Records*

Policy Requirements: All Federal-wide public policies apply to IHS grantees with exception of the Discrimination policy. See attached link for all public policies. *http://www.acf.hhs.gov/programs/ofs/grants/sf424b.pdf*

Requirements for Program and Budget Narratives

A. *Program Narrative:* This narrative should be a separate Word document that is no longer than 10 pages, single-spaced (see page limitations for each Part noted below) with consecutively numbered pages. If the narrative exceeds the page limit, only the first 10 pages will be reviewed. There are three parts to the narrative:

Section 1: Program Information—(2 Pages)

(1) Introduction and organizational capabilities.

(2) Need for assistance.

(3) User Population.

Section 2: Recipient Activities: Program Planning and Evaluation—(6 Pages)

(1) Program Plans. (2) Program Evaluation. Section 3: Program Report—(2 pages) (1) Describe major accomplishments over the last 24 months. (2) Describe major activities over the last 24 months.

B. Budget Narrative: This narrative must describe the budget requested and match the program plans and evaluation described in the program narrative.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by Friday, July 15, 2011 at 12 a.m. midnight Eastern Time. Any application received after the application deadline will not be accepted for processing, and it will be returned to the applicant(s) without further consideration for funding.

Letters of Intent: A Letter of Intent (LoI) is required from each entity that plans to apply for funding under this announcement. The LoI must be submitted to the Division of Grants Management to the attention of Andrew Diggs by June 10, 2011. Please submit all letters of intent via fax (301) 443–9602. Your LoI must reference the funding opportunity number, application deadline date, and your eligibility status. The letter must be signed by the authorized organizational official within your entity.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable for this announcement.
- The available funds are inclusive of direct and appropriate indirect costs.

6. Electronic Submission

Use the *http://www.Grants.gov* Web site to submit an application electronically and select the "Find Grant Opportunities" link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the application via the Grants.gov website. Electronic copies of the application may not be submitted as attachments to e-mail messages addressed to IHS employees or offices.

Please search for the application package in Grants.gov by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download your application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the DEDP will notify applicants that the application has been received.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or Grants.gov registration and/or request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Technical Challenges:

- If technical challenges arise and assistance is required with the electronic application process, contact the Grants.gov Customer Support via e-mail at *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM () at (301) 443–5204.Paul.Gettys@ihs.gov
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Please be sure to contact Mr. Gettys at least ten days prior to the application deadline.

Paper Submission (Waiver Requirements):

Paper applications are not the preferred method for submitting applications. If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained from the DGM. The waiver request must be documented in writing (e-mails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy application that is mailed to the DGM. The mailing address for your paper application will be included in your approved waiver request. Paper applications that are submitted without an approved waiver will be returned to the applicant without review or further consideration. Late applications will not be accepted for processing or considered for funding and will be returned to the applicant. Applicants that receive a waiver to submit paper application documents must follow the rules and timelines of this funding announcement. The applicant must seek assistance at least ten days prior to the application deadline.

- If it is determined that a waiver is needed, you must submit a request in writing (e-mails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the deadline date of July 15, 2011.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

E-mail applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. Additionally, all IHS grantees must notify potential first-tier subrecipients

that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. These requirements will ensure use of a universal identifier to enhance the quality of information available to the public. On October 1, 2010 recipients began to report information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended ("the Transparency Act"). The DUNS number is a unique nine digit identification number provided by D&B, which uniquely identifies your entity. The DUNS number is site specific; therefore each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, you may access it through the following website *http://fedgov.dnb.com/webform* or to expedite the process, call (866) 705–5711.

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the IRS that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour and your CCR registration will take approximately 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *http://www.ccr.gov.* Additional information on implementing the Transparency Act, including the specific requirements for DUNS and CCR, can be found on the IHS Grants Policy website:

http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.

V. Application Review Information

Evaluation criteria will be used in reviews of applications. Points will be assigned to each evaluation criterion adding up to a total of 100 points. A minimum score of 65 points is required for funding. Points are assigned to the extent that the applicant is able to demonstrate that they met the following criteria.

A. Evaluation Criteria: Program Narrative

(1) Introduction, Current Capacity, and Need for Assistance (25 Points)

a. Describe the applicant's current public health activities including whether the applicant has an adequate health department, how long it has been operating, what programs or services are currently provided, and interactions with other public health authorities in the regions (State, local, or Tribal), how long it has been operating, and what programs or services are currently provided. Specifically describe current epidemiologic capacity and history of support for such activities.

b. Provide a physical location of the TEC and area to be served by the proposed program including a map (include the map in the attachments), and specifically describe the office space and how it is going to be paid for.

c. If applicable, identify the past three years of grants relevant to public health and/or epidemiology, including past awarded cooperative agreements from the DEDP, dates of funding, and key project accomplishments (do not include copies of reports).

(2) Program Objective(s) (35 Points)

Approach, Results and Benefits for the entire 5-year funding period by year.

a. State in measurable and realistic terms the objectives and appropriate activities to achieve each objective for the projects as listed in the Recipient Activities.

b. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

c. Include a work-plan for each objective that indicates when the objectives and major activities will be accomplished and who will conduct the activities by each year for the entire five-year period.

(3) Program Evaluation (10 Points)

a. Define the criteria to be used to evaluate activities listed in the work-plan under the Recipient Activities and BRFSS project.

b. Explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved.

c. Describe how evaluation findings will be disseminated to stakeholders.

(4) Organization Capabilities and Qualifications (10 Points)

a. Explain the management and administrative structure of the organization including documentation of current certified financial management systems either from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant and an updated organizational chart (include chart in the attachments).

b. Describe the ability of the organization to manage a program of the proposed scope.

c. Provide position descriptions and biographical sketches of key personnel, including those of consultants or contractors in the Appendix. Position descriptions should very clearly describe each position and its duties, indicating desired qualification and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities. Applicants with expertise in epidemiology will receive priority.

(5) Behavioral Risk Factor Surveillance System (BRFSS) (15 Points)

a. Describe the BRFSS project specifically for AI/AN populations to evaluate the health risk behaviors to include, at a minimum, CDC's "core" BRFSS.

b. Identify a statistically representative sample of Tribal and urban communities that will participate in the BRFSS.

c. Describe how the applicant will define and complete the following items as part of their proposal: develop a protocol for conducting the BRFSS; develop a sampling method and recruitment strategy; meet with the Tribal Health Director, Health Board, and Tribal Council for review and approval; submit protocols for IRB review; select and train interviewers for the BRFSS.

d. Describe how to develop a data base to enter data collected on the BRFSS.

e. Provide a dissemination plan that includes a project overview, dissemination goals, targeted audiences, key messages, details of the dissemination plan and evaluation.

f. Complete a separate budget for the BRFSS project.

(6) Budget (5 Points)

a. Provide a categorical budget by line item and by each year for the entire five-year period, including a separate budget for the BRFSS project.

b. Provide a justification by line item in the budget including sufficient cost and other details to facilitate the determination of cost allowability and relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project.

c. If use of consultants or contractors are proposed or anticipated, provide a detailed budget and scope of work that clearly defines the deliverables or outcomes anticipated.

B. Review and Selection Process

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the Objective Review Committee (ORC).

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score and/or are incomplete will be considered to be "Disapproved" and will be informed via e-mail or regular mail by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page of the application within 60 days of the completion of the objective review.

Award Date(s): September 16, 2011.

The DEDP will recommend successful applicants for funding based on the results of the objective review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by DGM and will be mailed via postal mail or e-mailed to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document and is signed by an authorized grants official within the IHS.

2. Administrative Requirements

Grants are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR, part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR, part 74, Uniform Administrative Requirements for Awards and Subawards to institutions of Higher Education, Hospitals, Other Non-profit Organizations, and Commercial Organizations.

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

- Title 2: Grants and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB A–87).
- Title 2: Grants and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

- OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current indirect cost rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the indirect cost portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation *http://rates.psc.gov/*and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report, (FFR- SF–425), Cash Transaction Reports are due every calendar quarter to the Division of Payment Management, Payment Management Branch, HHS at: *http://www.dpm.gov* Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports; the Progress Reports, Financial Status Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR Part 170.

The Transparency Act requires the Office of Management and Budget to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective as of October 1, 2010, IHS implemented new Terms of Award. All New (Type 1) IHS grant and cooperative agreement awards issued on or after October 1, 2010 may be subject to the Transparency Act Subaward and Executive Compensation reporting requirements. Additionally, all IHS Renewal (Type 2) grant and cooperative agreement awards and Competing Revision awards (Competing T–3s) issued on or after October 1, 2010 may also be subject to the following award term. Further guidance on Renewal and Competing Revision awards is expected to be provided as it becomes available.

Please visit the IHS Grants Policy Web site at *https://www.ihs.gov/NonMedical*

Programs/gogp for additional information on award applicability information.

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

For program-related information: Selina T. Keryte, Project Officer, Division of Epidemiology & Disease Prevention, Indian Health Service, 5300 Homestead NE, Albuquerque, NM 87110, (505) 248–4132 or *Selina.keryte@ihs.gov*.

For specific grant-related and business management information: Andrew Diggs, Grants Management Specialist, Division of Grants Management, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, (301) 443–2262 or *Andrew.diggs@ihs.gov*.

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: May 31, 2011.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2011–14131 Filed 6–7–11; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 11, 2011.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14161 Filed 6–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: July 12, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes Of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, PhD, Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, Md 20892, (301) 496–7628, *wojcikb@mail.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.deainfo.nci.nih.gov/advisory/bsc.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 31, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14158 Filed 6–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK KUH–Fellowship Review.

Date: June 29, 2011.

Time: 8 a.m. to 4 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: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Infant Feeding and Child Overweight Among GDM Offspring.

Date: July 6, 2011,

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6706 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, CKD Clinical Trial.

Date: July 6, 2011.

Time: 3 p.m. to 3:45 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: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology andMetabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 2, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14102 Filed 6–7–11; 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–10–276: Research in Biomedicine and Agriculture: Infectious Diseases, Immunology and the Circulatory System Overflow.

Date: June 23, 2011.

Time: 3 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: Richard G Kostriken, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–402–4454, *kostrikr@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, Member Conflict: Cancer Therapeutics.

Date: June 29, 2011.

Time: 1 p.m. to *3:30 p.m.*

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Careen K Tang-Toth, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301)435–3504, *tothct@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetics and Disease.

Date: June 30, 2011.

Time: 2 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: Cheryl M Corsaro, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fogarty Brain Disorders Review.

Date: July 7–8, 2011.

Time: 8:a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Mark Hopkins Hotel, 999 California Street, San Francisco, CA 94108.

Contact Person: Dan D Gerendasy, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3218, MSC 7843, Bethesda, MD 20892, 301–408–9164, *gerendad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Risk, Prevention and Intervention for Addictions: Overflow.

Date: July 7–8, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Kristen Prentice, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetics and Disease.

Date: July 7, 2011.

Time: 1 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: Cheryl M Corsaro, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: July 11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Kenneth A Roebuck, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Development and Function.

Date: July 11, 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: Jerry L Taylor, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, 301–435–1175, *taylorje@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Nephrology.

Date: July 12–13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Atul Sahai, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Cancer Diagnostics and Treatments.

Date: July 12–13, 2011.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lilia Topol, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *ltopol@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Neurotechnology and Neurogenetics.

Date: July 12, 2011.

Time: 11:00 a.m. to *2 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: Joseph G Rudolph, *PH.D,* Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Visual and Vestibular Systems.

Date: July 12–13, 2011.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: M Catherine Bennett, *PH.D,* Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7846, Bethesda, MD 20892, 301–435–1766, *bennettc3@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: June 2, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14101 Filed 6–7–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Children Affected by Methamphetamine in Family Drug Treatment Court—NEW

In 2010, the Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), provided funding to 12 existing Family Treatment Drug Courts (FTDCs) for enhancement and/or expansion of their FTDC's capabilities to provide psycho-social, emotional and mental health services to children (0–17 years) and their families who have methamphetamine use disorders and involvement in child protective services. This program was authorized in House Report 111–220 accompanying HR 3293 in 2010. The Committee language stated that "these grants will support a collaborative approach, including treatment providers, child welfare specialists, and judges, to provide community-based social services for the children of methamphetamine-addicted parents," and were to be awarded to Family Dependency Treatment Drug Courts.

The proposed data collection for the grantees, referred to as the Children Affected by Methamphetamine in Family Treatment Drug Court (CAM–FTDC) project, will provide knowledge about the services needed and provided to these and similar families. The data to be collected by the CAM–FTDC program is SAMHSA's first Federal data collection effort focused specifically on the needs of children whose parents have a substance use disorder and are participating in an FTDC and on effective strategies to address their needs. The information collected through the CAM–FTDC program will benefit SAMHSA by providing an in-depth understanding of the needs of the children and families served by CAM–FTDC. Findings from this program will provide SAMHSA with valuable information regarding appropriate service interventions for this population and, ultimately, inform SAMHSA on how the agency can best meet the needs of future drug endangered children. The results from this data collection will serve to inform future decisions regarding funding by SAMHSA as well as establish an evidence base for the practices undertaken for other localities and programs implementing Family Treatment Drug Courts.

The evaluation of the CAM–FTDC project will collect data on children, parents/caregivers, family functioning and interagency collaboration. The domains specified in the Request for Applications (RFA) are: (1) Child Outcomes; (2) Parent/Caregiver Outcomes; (3) Family Functioning; and, (4) Interagency Collaboration.

To the greatest extent possible, the data elements are operationally defined using standard definitions in child welfare and substance abuse treatment. *The use of standard data definitions will reduce the data collection burden on grantees as these variables are collected through data collection procedures that currently exist through all publically funded child welfare and substance abuse treatment systems.* The CAM–FTDC performance measures are data currently collected by programs as part of their normal operations (*e.g.,* placement status in child welfare services, substance abuse treatment entry dates). Thus, no primary data collection from clients will be required as the grantees will be abstracting existing data. The information utilized for the North Carolina Family Assessment Scale rating is obtained during the intake interview that sites engage in when determining program eligibility and suitability. If needed, the CAM FTDC staff member may supplement this information by obtaining information from other staff that interact with the client (*i.e.,* the social worker familiar with the family) or during a home visit (if this is part of their program activities).

It should be re-emphasized that the CAM–FTDC projects are expansions or enhancements of FTDC partnerships that currently have existing relationships (and information sharing/confidentiality agreements) in place. It is through this existing information sharing forum that the CAM grantees will be able to obtain the requisite child welfare and substance abuse treatment performance measures.

The grantees will use electronic abstraction and secondary data collection for elements that are already being collected by counties and States in their reporting requirements of Federally-mandated data. There are five data sources that will be used to collect and report the performance measures: Two Federal child welfare data sets, a Federal substance abuse treatment data set, the North Carolina Family Assessment Scale, and an interagency collaboration survey administered to CAM FTDC program staff.

Exhibit 1 presents the estimated total cost burden associated with the collection of the CAM–FTDC data elements. The following estimates represent the minimum CAM–FTDC clients required to be served by the CAM–FTDC grantees (i.e., a minimum of 20 methamphetamine-using clients is required in order to have a sufficient number of participants in the program × 12 grantees). The identified respondent for the annualized hour burden for the child, parent/caregiver and family functioning elements is the grantee staff person who will extract data from CAM–FTDC client. For the interagency collaboration measure, the respondent is identified as a CAM–FTDC staff member. It is estimated that 10 CAM–FTDC staff members from each of the 12 grantees will complete the interagency collaboration measure. The estimated total cost of the time that will be spent completing data collection is $18,400 (total number of respondent hours × $18.40, the estimated average hourly wages for adults as published by the Bureau of Labor Statistics, 2010).

EXHIBIT 1—ANNUALIZED HOUR BURDEN

Form/Instrument	Number of records	Responses per record	Total responses	Hours per response [1]	Total hour burden
CAM Form—Secondary extraction (12 sites × 20 families)	240	2	480	.5	240
North Carolina Family Assessment Form—Scale-General + Reunification (NCFAS − G + R) (12 sites × 20 families)	240	2	480	.5	240
Collaborative Capacity Instrument—(CCI) (12 sites × 10 families)	120	1	120	.33	39.6
Total	600		1,080		519.6

[1] The estimated response burden includes the extractions and uploads to the CAM Form and the North Carolina Family Assessment Form.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 or e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: May 27, 2011.

Elaine Parry,

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–14095 Filed 6–7–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities, Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on 240–276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Triennial Evaluation of the Projects for Assistance in Transition from Homelessness (PATH)—New

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to nonprofit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for a collection of contextual, process, and outcome information to evaluate the national PATH program. Section 528 of the PHS Act specifies that the Administrator of the Substance Abuse and Mental Health Services Administration shall evaluate at least once every 3 years the expenditures of grants under this part by eligible entities in order to ensure that expenditures are consistent with the provisions of this part. The evaluation shall include recommendations regarding changes in program design or operations.

The Proposed Data Collection Includes

- Interviews with 10 State Path Contacts (SPCs) and an online survey with all 56 SPCs to gather more information on how States plan, solicit, and monitor local providers using PATH funding; the challenges faced in their operating environment, in working with the populations they serve, and the environment in which they work; remaining gaps and needs as well as possible solutions and recommendations for bridging gaps and filling needs and improving PATH efficiency and effectiveness.
- Interviews with 20–60 local providers and an online survey with 1 representative who provides face-to-face, PATH-funded services to clients selected randomly from each local service provider (n = 483). Like SPC interviews and online surveys, the focus of this part of the data collection effort will be on assessing local providers' views on the challenges faced in their operating environment, in working with the populations they serve and the environment in which they work; on training received and needed; reporting requirements and burden; remaining gaps and needs and possible solutions and recommendations for bridging gaps and filling needs and improving PATH efficiency and effectiveness.
- Focus groups with 8–12 consumers that will be conducted on location at each of the 10 PATH locations selected for site visitation. The focus groups will assess clients' knowledge of PATH; the types of services they receive; satisfaction with services received; perceived needs that are not being met; and recommendations to improve service access, delivery, and comprehensiveness.

The estimated total burden for the reporting requirements for the triennial PATH evaluation is summarized in the table below.

TABLE 1—ANNUAL BURDEN

PATH evaluation	Number of respondents	Responses/respondent	Total responses	Hours/response	Total hour burden
Online Surveys:					
State PATH Contact	56	1	56	1	56
PATH Provider	483	1	483	.75	363
Site Visit Interviews (10 sites):					
State PATH Contact	*10	1	10	1.1	11
Provider Staff—Supervisor/Administrator	**30	1	30	.67	20
Provider Staff—Outreach Worker/Case Manager	***30	1	30	.67	20
Consumer Focus Group Discussion	****120	1	120	1.5	180
Total	729		729		650

* 1 respondent × 10 sites = 10 total respondents.
** Up to 3 respondents × 10 sites = 30 total respondents.
*** Up to 3 respondents × 10 sites = 30 total respondents.
**** Up to 12 respondents × 10 sites = 120 respondents.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 and e-mail a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: May 31, 2011.

Elaine Parry

Director, Office of Management, Technology and Operations.

[FR Doc. 2011–14090 Filed 6–7–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0003]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0058; Fire Management Assistance Grant Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0058; FEMA Form 078–0–1 (previously FEMA Form 90–58), Request for Fire Management Assistance Declaration; FEMA Form 089–0–24 (previously FEMA Form 90–133), Request for Fire Management Sub-grant; FEMA Form 078–0–2 (previously FEMA Form 90–32), Principal Advisor's Report.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection

abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Fire Management Assistance Grant Program.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0058.

Form Titles and Numbers: FEMA Form 078–0–1 (previously FEMA Form 90–58), Request for Fire Management Assistance Declaration; FEMA Form 089–0–24 (previously FEMA Form 90–133), Request for Fire Management Subgrant; FEMA Form 078–0–2 (previously FEMA Form 90–32), Principal Advisor's Report.

Abstract: The information collection is required to make grant eligibility determinations for the Fire Management Assistance Grant Program (FMAGP). These eligibility-based grants and subgrants provide assistance to any eligible State, Tribal Government, or local government for the mitigation, management, and control of a fire on public or private forest land or grassland that is threatening such destruction as would constitute a major disaster. The data/information gathered in the forms is used to determine the severity of the threatening fire, current and forecast weather conditions, and associated factors related to the fire and its potential threat as a major disaster.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 178.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: FEMA-State Agreement and Amendment, 24 minutes; State Administrative Plan for Fire Management Assistance, 8 hours; Request for Fire Management Assistance Declaration, FEMA Form 078–0–1 (Previously FF 90–58), 1 hour; Request for Fire Management Assistance Subgrant, FEMA Form 089–0–24 (Previously FF 90–133), 18 minutes; Principal Advisor's Report, FEMA Form 078–0–2 (Previously FF 90–32), 3 hours; Appeal Letter, 1 hour; Duplication of Benefits Letter, 1 hour; Training Sessions, 90 minutes.

Estimated Total Annual Burden Hours: 810.5 hours.

Estimated Cost: There are no annual operation, maintenance, capital or startup costs associated with this collection.

Dated: June 1, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–14069 Filed 6–7–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0007]

Agency Information Collection Activities, Submission for OMB Review; Comment Request; Severe Repetitive Loss (SRL) Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Severe Repetitive Loss (SRL) Appeals.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0104.

Form Titles and Numbers: None.

Abstract: The SRL program provides property owners with the ability to appeal an increase in their flood insurance premium rate if they refuse an offer of mitigation under this program. The property owner must submit information to FEMA to support their appeal.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 10.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: Appeals Written Request and Supporting Documentation, 10 hours.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Cost: The estimated annual operations and maintenance costs for SRL appeals is $30,488. There is no annual start-up or capital costs.

Dated: June 1, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–14071 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2011–0006]

Agency Information Collection Activities, Submission for OMB Review; Comment Request; Property Acquisition and Relocation for Open Space

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; FEMA Form 086–0–31 (previously FEMA Form 81–112), Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0103.

Form Titles and Numbers: FEMA Form 086–0–31 (previously FEMA Form 81–112), Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space.

Abstract: FEMA and State and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local or Tribal Government; Individuals or Households.

Estimated Number of Respondents: 56.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: Property Owners Voluntary Participation Statements/FEMA Form 086–0–31 (previously FEMA Form 81–112), 1 hour; States Review and Submit Deed Restrictions, 4 hours; State Officials Reporting Requirements, 1 hour and 18 minutes.

Estimated Total Annual Burden Hours: 11,273 hours.

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Dated: June 1, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–14075 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2011–0005]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0062; State/Local/Tribal Hazard Mitigation Plans

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0062; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

Type of information collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0062.

Form Titles and Numbers: None.

Abstract: The purpose of State, Local and Tribal Hazard Mitigation Plan requirements is to support the administration of FEMA Mitigation grant programs, and contemplate a significant State, Local and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of plans, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals, priorities to reduce risks from natural hazards.

Affected Public: State, local or Tribal Government.

Estimated Number of Respondents: 56.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: New Plan Development, 2,080 hours; Mitigation Plan Updates, 320 hours; Mitigation Plans Review by States, 8 hours.

Estimated Total Annual Burden Hours: 768,320 hours.

Estimated Cost: There are no operation and maintenance, or capital and start-up costs associated with this collection of information.

Dated: June 1, 2011.

Lesia M. Banks,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2011–14070 Filed 6–7–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities; New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: USCIS intake page for Pay.Gov; OMB Control No. 1615–New.

On March 3, 2011, USCIS published a 60-day notice in the **Federal Register** at 76 FR 11805 announcing the new information collection, Visa Processing Fee Payment. The notice invited comments during the 60-day comment period. USCIS did not receive any comments on the 60-day notice. USCIS published a 30-day notice in the **Federal Register** on May 9, 2011, at 76 FR 26750. Subsequently, USCIS did not receive any comments on the 30-day notice.

After the 30-day notice was published in the **Federal Register** USCIS changed the name of the information collection from "Visa Processing Fee Payment" to "USCIS intake page for Pay.Gov". This change will allow this information collection request to be used to collect the information necessary to process more than one fee through *Pay.gov* as may be necessary.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This collection results from the development of a system to receive, track, and reconcile fee payments for a Request for Civil Surgeon Designation, Collection of Biometric Services Fees from overseas residents, and collection of the DHS Immigrant Visa Domestic Processing Fee.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 8, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add "USCIS intake page for *Pay.Gov*" in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* USCIS intake page for *Pay.Gov.*

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* This information collection is necessary for USCIS to track payment of the visa processing fee and reconcile the payment received in the Federal Financial Management System (FFMS), and the applicant's file.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: *Immigrant Visa Application:* 500,000 responses at 10 minutes (.166 hours) per response. *Civil Surgeon Designation Application:* 1,200 responses at 10 minutes (.166 hours) per response. *Overseas Biometrics Services:* 20,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 86,519 annual burden hours.

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

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

Dated: June 2, 2011.

Sunday Aigbe,

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

[FR Doc. 2011–14083 Filed 6–7–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5485–N–01]

Notice of Proposed Information Collection, Comment Request; Application for HealthyHomes and Lead Hazard Control Grant Programs and Quality Assurance Plans

AGENCY: Office of Healthy Homes and Lead Hazard Control, U.S. Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will besubmitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 15, 2011 .

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Jeffrey Simpkins, Technical Assistance Specialist, Department of Housing and Urban Development, 451 7th Street, SW., Room 8236, Washington, DC 20410; e-mail *Jeffrey.W.Simpkins@hud.gov*, or telephone (202) 402–7180.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

After the award of grants, HUD's Office of Healthy Homes and Lead Hazard Control requires its Healthy Homes Demonstration, Healthy Homes Technical Studies grantees, and Lead Technical Studies grantees which are conducting research or significant evaluation activities, to submit a *Quality Assurance Plan (QAP)* to the Office for approval before they initiate data collection. This requirement also applies to Office of Healthy Homes and Lead Hazard Control contractors who conduct such research or evaluation activities. This requirement has been established because quality assurance procedures ensure the accuracy and validity of data. The use of quality assurance plan templates helps to ensure that quality assurance activities are well planned and thorough, and standardizes the formatting of the plans, which aids both the respondents in plan development and HUD staff in their review. The use of different templates for technical studies and demonstration projects was designed to reduce respondent burden by requiring more detailed information only for the technical studies (research) projects, consistent with their more rigorous quality assurance requirements.

Title of Proposal: Application for Healthy Homes and Lead Hazard Control Grant Programs and Quality Assurance Plans.

OMB Control Number, if applicable: 2539–0015.

Description of the need for the information and proposed use: This information collection is required in conjunction with the issuance of Notices of Funding Availability for approximately $150,000,000 for Healthy Homes and Lead Hazard Control Programs that are authorized under Title X of the Housing and Community Development Act of 1992, Public Law 102–550, section 1011, and other legislation.

Agency form numbers, if applicable: HUD 96008, 96012, 96013, 960014, 96015, and standard grant forms.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Number of respondents: 330; frequency of responses: 1; hours per response:25; burden hours: 8250.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: June 2, 2011.

Jon L. Gant,

Director, Office of Healthy Homes and Lead Hazard Control.

[FR Doc. 2011–14109 Filed 6–7–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5524–N–01]

Energy Performance Contracting—Request for Comments on Proposed Guidance and Policy Clarifications

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice solicits public comment on certain key issues that will be addressed in HUD's forthcoming guidance on the Energy Performance Contracting (EPC) program. HUD will consider all comments as it updates its guidebook entitled "Energy Performance Contracting for Public and Indian Housing" (Greenbook). This notice also clarifies existing guidance related to EPCs.

DATES: *Comments Due Date:* July 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's updated Greenbook, as announced in this notice, to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0001. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

Submission of Hard Copy Comments. To ensure that the information is fully considered by all of the reviewers, each commenter submitting hard copy comments, by mail or hand delivery, should submit comments or requests to the address above, addressed to the attention of the Rules Docket Clerk. Due to security measures at all federal agencies, submission of comments or requests by mail often result in delayed delivery. To ensure timely receipt of comments, HUD recommends that any comments submitted by mail be submitted at least 2 weeks in advance of the public comment deadline.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit

comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

No Facsimile Comments. Facsimile (Fax) comments are not acceptable.

Public Inspection of Comments. All comments submitted to HUD regarding this notice will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the documents must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Copies of all documents submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shauna Sorrells, Director, Public Housing Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4232, Washington, DC 20410–4000, telephone number 202–402–2769 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(e) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*), as amended, establishes an Operating Fund for the purpose of making assistance available to public housing agencies (PHAs) for the operation and management of public housing, including the management of energy costs associated with public housing units, with an emphasis on energy conservation. HUD's regulations implementing the Operating Fund are located at 24 CFR part 990. Section 990.185 provides that PHAs may qualify for financial incentives when undertaking conservation measures that are financed by an entity other than HUD. PHAs that take advantage of HUD's third-party financed energy reduction incentives typically do so through EPCs. An EPC is a financing technique that uses the cost savings from reduced energy consumption to pay the cost of installing energy conservation measures (ECMs).

II. Updating the Greenbook and Request for Public Comment

HUD issued the Greenbook in February, 1992, and it is available at *http://www.huduser.org/publications/pdf/energy.pdf.* The Greenbook serves as the principal policy guidance for PHAs interested in pursuing EPCs. The Greenbook defines and clarifies how PHAs may undertake EPCs in accordance with HUD regulations, and provides PHAs, HUD field staff, potential performance contractors, and other stakeholders with information about HUD incentives, required documentation, and other necessary approvals in the EPC process.

Since the publication of the Greenbook, HUD has updated guidance related to EPCs through a series of notices, checklists, and by providing technical assistance to PHAs contemplating energy projects. HUD is currently drafting a comprehensive update of the Greenbook to consolidate all current EPC procedures into a single source. A major benefit for updating the Greenbook is to standardize the submission, review, and approval processes in an effort to streamline EPC processing time, while preserving HUD's responsibility to approve qualified projects within regulatory requirements.

In advance of issuing a revised Greenbook, HUD is seeking public comment to inform its development of comprehensive guidance regarding the use of EPCs. HUD's goal is to provide a meaningful opportunity for PHAs, energy engineers, energy service companies, financial analysts reviewing EPCs, and the general public to participate in the development of useful and effective guidance that promotes and streamlines the use of EPCs. HUD will consider all comments submitted in response to this notice in developing its updated and revised Greenbook.

The following is a list of topics on which HUD specifically seeks comments.

1. Streamlining the Process

Currently, the approval process for EPCs takes approximately 14–18 months, from the time the PHA develops their Request for Proposal/Qualifications until there is a Notice to Proceed from the Department. HUD plans to reduce this time, and seeks comments on the following specific questions:

a. What is a reasonable approval timeline for an EPC?

b. What obstacles or roadblocks, if any, exist in the current approval process?

c. What can HUD do to streamline the approval process?

d. What alternatives to current procurement procedures would expedite the approval process?

e. How would a formal appeal process for disapproved EPCs benefit PHAs, Energy Services Companies (ESCOs), or other stakeholders?

2. Net Present Value

Currently, HUD is considering requiring that the Investment Grade Energy Audit incorporate Net Present Value calculations. Does the industry use a standard rate of return for these calculations?

3. Measurement and Verification (M&V) Requirements

Under PIH Notice 2009–16, HUD currently recommends that PHAs obtain independent 3rd party M&V reports annually for projects over $10 million, and every three years for projects costing less than $10 million.

a. What benefits are there to implementing mandatory independent 3rd party M&V for all projects? What considerations should be made in implementing such a requirement?

b. What qualifications should be required of parties performing 3rd party M&V? Should such requirements for 3rd party M&V companies include a requirement that they hold "current" certifications? And how should a "current" certification be defined (*e.g.,* certification received in the past two years)?

c. How could significant differences between a 3rd party report and the ESCO's M&V report be reconciled?

d. How can the measurement and verification of energy cost savings be improved?

e. What additional controls, if any, are needed to ensure that utility cost savings are properly calculated and reported in M&V reports? Should such controls include a requirement that the calculated cost savings be certified by a Professional Engineer (PE)?

f. What additional controls, if any, are needed to ensure that the costs of EPCs are properly repaid from energy savings?

4. Removing Barriers to EPCs

Over the lifetime of HUD's EPC program, there have been approximately 240 EPCs executed by PHAs. The vast majority of these EPCs have been completed by medium and large PHAs. HUD would like to involve more PHAs in the EPC program, especially small PHAs.

a. How can HUD improve PHAs' capacity to perform self-developed EPCs?

b. What can HUD do to improve access to EPCs for small PHAs? For instance, should HUD allow for EPCs for several small PHAs to be bundled together and performed by one (1) ESCO? By bundling EPCs together, would the overall scope be more attractive and provide a large enough investment/incentive for the ESCOs?

5. Section 3 Compliance

The Section 3 program requires that recipients of EPC incentives, to the greatest extent possible, provide job training, employment, and contract opportunities for low- or very-low income residents and qualified businesses in connection with the EPC project (see 24 CFR part 135). How can HUD improve Section 3 compliance and employment associated with EPCs?

6. Energy and Water Auditing and Investment Standards

Energy and water conservation investment opportunities are typically determined by an investment grade audit of a portfolio's energy and water usage and costs and the various factors affecting consumption. In some cases, EPCs have been found to be impractical because sufficient savings from low-cost conservation measures could not be leveraged. HUD is interested in knowing whether the current approach for identifying cost-effective energy and water conservation measures enables or impedes the development of comprehensive retrofit strategies for materially reducing utility costs.

a. Are some high-cost measures not reachable through EPCs because the ratio of savings is too low relative to the investment and transaction costs?

b. How can renewable energy investments be encouraged under EPC?

c. Should EPCs permit the investments of green building measures if sufficient savings or other resources can be leveraged to cover investment costs?

d. Should HUD adopt an alternative assessment and auditing protocol for PHA's undertaking self-direct EPCs? Could a Green Physical Needs Assessment provide a useful mechanism for developing an investment plan for reducing utility costs? Could a Home Energy Rating System program (HERS) audit be used by very-small and small-PHA's undertaking EPC's and if so how should the projected energy savings be estimated?

e. What steps can be taken to lower and control non-investment transaction costs?

7. Leveraging

PHAs are encouraged to leverage external resources to offset the costs of energy and water conservation investments. In some cases, accessing available rebates and incentives can be difficult and not well aligned with the EPC process and implementation period. HUD is interested in knowing how leveraging can be increased in conjunction with EPCs.

a. What challenges exist in aligning EPCs with the processes and requirements established for available external energy efficiency and water conservation programs? Are different auditing protocols used or required? Do requirements for using business process improvement (BPI) certified contractors pose implementation barriers? Are inspection and quality assurance requirements duplicative? Are there load-ordering investment requirements that conflict with EPC investment priorities?

b. How can or should the EPC process be modified to enable greater leveraging of incentives and rebates available from external sources such as utility and local governmental programs?

c. What approaches or mechanisms are needed to enable PHAs to access and leverage energy efficiency and renewable energy tax credits?

III. Policy Clarifications

HUD is also using this Federal Register notice to clarify existing policy regarding EPCs.

1. Allowable M&V options for EPCs

Several stakeholders have questioned whether HUD intended to limit the use of certain M&V options currently available in HUD's EPC program. In response to this concern, the Department wishes to clarify that it will continue to allow all M&V options detailed in the International Performance Measurement & Verification Protocol (IPMVP). These M&V options are accepted methods for measuring and verifying the amount of utilities consumed by a building or the change in the amount of utilities consumed by a building due to a retrofit. The Department finds that these M&V methods can be conducted accurately and represent the utility consumption or change of utility consumption in EPCs.

2. Resident Paid Incentive

HUD has been asked whether the add-on subsidy incentive, found at 24 CFR 990.185(a)(3), is available to finance ECMs where the utilities are resident-paid. HUD re-affirms that PHAs may not use the add-on incentive for that purpose. PHAs undertaking energy conservation measures that are financed by an entity other than HUD may include resident-paid utilities under the consumption reduction incentive consistent with 24 CFR 990.185(a)(2)(iii). This approach allows a PHA to exclude from its Operating Fund rental income calculations any rents received that are as a result of decreased utility allowances resulting from decreased consumption. The PHA must exclude from its calculation of rental income the increased rental income due to the difference between the baseline allowance and the revised allowances of the projects for the duration of the contract period.

3. Prohibition Against Liens

HUD re-affirms that, when using an ESCO as part of an EPC, no lien or encumbrance is to be placed on public housing rental property (real or personal property, such as fixtures). Similarly, if the PHA is considering financing of an EPC with another third party, such as a bank, no liens may be placed on public housing rental property including any bank account, reserve or other personal property (including the energy improvement fixtures) of the PHA. All public housing property is subject to the Declaration of Trust and use requirements of the Annual Contributions Contract and section 9 of the United States Housing Act of 1937. All public housing property is required to have a currently effective and recorded Declaration of Trust. Any secondary lien must be reviewed and approved by HUD Headquarters. Any Capital Fund financing or Operating Fund financing under section 9 or section 30 of the 1937 Act must also be approved by HUD Headquarters.

4. Funds resulting from the Operating Fund Benefit

Funds resulting from the Operating Fund Benefit may not be included in an approved EPC cash flow. There are two types of incentives offered for reduced utility consumption. The first is the Rolling Base Consumption Level (RBCL) (24 CFR 990.170). The purpose of the RBCL is to encourage PHAs to make management and maintenance decisions that result in energy-efficiency improvements, whether large or small, through the normal course of operation. This incentive is part of a PHA's normal operating subsidy eligibility and results in excess subsidy that decreases over a four year period and is an Operating Fund Benefit. The Operating Fund Benefit is not an EPC incentive. The second type of utility cost reduction incentive are those incentives offered

under the EPC program (24 CFR part 185). To qualify for these incentives, the PHA must obtain third-party financing and ensure that the projected savings are sufficient to cover the costs of the improvements. These are large-scale projects that require effort beyond the normal course of operation. The Operating Fund regulations do not allow the combining of these two incentive types to increase savings and to include more energy conservation measures within an EPC.

Dated: May 27, 2011.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–14049 Filed 6–7–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–FA–30]

Announcement of Funding Awards for the Technical Assistance and Capacity Building under the Transformation Initiative Program Fiscal Year 2010

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Notice of Funding Availability (NOFA) for the Technical Assistance and Capacity Building under the Transformation Initiative program for fiscal year 2010. This announcement contains the names of the awardees and amounts of the awards made available by HUD.

FOR FURTHER INFORMATION CONTACT: Holly A. Kelly, Acting Director, Technical Assistance Division, Office of Community Planning and Development, 451 Seventh Street, SW., Room 7218, Washington, DC 20410–7000; telephone (202) 402–6324 (this is not a toll-free number). Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service during working hours at 800–877–8339. For general information on this and other HUD programs, call Community Connections at 1–800–998–9999 or visit the HUD Web site at *http://www.hud.gov*.

SUPPLEMENTARY INFORMATION: The Fiscal Year 2010 Technical Assistance and Capacity Building under the Transformation Initiative program funds were awarded under two funding categories:

OneCPD

The purpose of OneCPD is to provide state government, local government and nonprofit recipients of federal community development, affordable housing, economic development and special needs funding with the assessment tools and technical and capacity building assistance needed to fully understand their local market conditions, to increase their capacity to successfully carry out federal assistance programs while leveraging other public and private resources, and to achieve positive and measurable outcomes. Under OneCPD, technical assistance will involve the delivery of expert statutory, regulatory, and technical support that improves the program knowledge, skills and capacity of CPD's grantees and their partners. Capacity building efforts will be directed at advancing the efficiency and performance of grantees and their partners (*e.g.,* for-profit and public or private non-profit organizations) in the administration of federal affordable housing, community and economic development programs, the leveraging of other resources and the furthering of key Departmental objectives, including but not limited to, energy efficiency and green building.

Core Curricula

The purpose of the HUD Core Curricula for Skills-Based Training is to develop and deliver training courses and seminars to improve the core skills of HUD grantee staff commonly needed for the administration of many HUD programs. Funds will be awarded to develop "core curricula" in the several areas including (1) Development Finance, (2) Environmental Review and Compliance, (3) Asset Management and Preservation of HUD–Assisted Projects and (4) Construction and Rehabilitation Management.

The competition was announced in the NOFA published on January 4, 2011 (FR–5415–N–30) and closed on February 24, 2011. The NOFA allowed for approximately $24 million for OneCPD and Core Curricula awards. Applications were rated and selected for funding on the basis of selection criteria contained in the Notice. For the Fiscal Year 2010 competition, 17 awards totaling $23,303,000 were awarded to 13 different technical assistance providers nationwide.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the grantees and the amounts of the awards in Appendix A to this document.

Dated: May 31, 2011.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

APPENDIX A

Recipient	State	Amount
OneCPD		
Cloudburst Consulting Group Inc	MD	$4,515,500
Corporation for Supportive Housing	NY	125,000
Dennison Associates, Inc	DC	200,000
Econometrica, Inc	MD	500,000
Enterprise Community Partners, Inc	MD	4,599,000
First Nations Development Institute	CO	100,000
Housing Assistance Council	DC	650,000
ICF Incorporated, L.L.C	VA	4,224,000
Minnesota Housing Partnership	MN	750,000
National Association for Latino Community Asset Builders	TX	900,000
National Center on Family Homelessness, Inc	MA	700,000
Training & Development Associates, Inc	NC	5,094,500
University of Texas-Pan American	TX	350,000

APPENDIX A—Continued

Recipient	State	Amount
Total Awarded for OneCPD		22,708,000
Core Curricula		
Cloudburst Consulting Group Inc	MD	93,573
ICF Incorporated, L.L.C	VA	148,750
ICF Incorporated, L.L.C	VA	148,750
Training & Development Associates, Inc	NC	203,927
Total Awarded for Core Curricula		595,000
Total Awarded for Technical Assistance and Capacity Building		23,303,000

[FR Doc. 2011–14122 Filed 6–7–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5525–N–01]

Use of Small Area Fair Market Rents for Project Base Vouchers in the Dallas TX Metropolitan Area

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice clarifies the use of Small Area Fair Market Rents (SAFMRs) for Project-Based Vouchers (PBVs) located in the Dallas, TX, metropolitan area. This notice follows **Federal Register** notices published on August 4, 2010, and October 4, 2010, that proposed and established, respectively, Fiscal Year (FY) 2011 SAFMRs for the Housing Choice Voucher (HCV) program in the Dallas, TX, HUD Metropolitan Fair Market Rent Area (MHFA). The October 4, 2010, notice provides that all public housing agencies (PHAs) in the 8-county Dallas, TX, MHFA are required to use SAFMRs for the voucher program. Today's notice clarifies the use of the SAFMRs by PBV projects located in the 8-county Dallas, TX, MHFA.

FOR FURTHER INFORMATION CONTACT: Laure Rawson, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Room 4210, 451 7th Street, SW., Washington, DC 20410–0500; telephone number 202–402–2425 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at telephone number 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On August 4, 2010 (75 FR 46958), HUD published for public comment its proposed FY 2011 Fair Market Rents (FMRs) in accordance with Section 8(c)(1) of the United States Housing Act of 1937 (USHA) (42 U.S.C. 1437f(c)(1)). In the HCV program, the FMR is the basis for determining the "payment standard amount" used to calculate the maximum monthly subsidy for an assisted family (*see* 24 CFR 982.503). In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, and safe rental housing of a modest (nonluxury) nature with suitable amenities. In addition, all rents subsidized under the HCV program must meet reasonable rent standards.

The August 4, 2010, notice also proposed SAFMRs for the Dallas, TX MHFA. HUD described the methodology for determining SAFMRs in a May 18, 2010, (75 FR 27808) **Federal Register** notice. Specifically, HUD noted that the methodology for calculating FMRs based on current Office of Management and Budget (OMB) metropolitan area definitions allows HUD Section 8 Voucher Tenants access to different parts of a metropolitan area. However, because FMRs are generally set at the 40th percentile of the metropolitan rent distribution, certain neighborhoods may not have many units available in the FMR range. To provide voucher holders with the opportunity to move to areas of greater opportunity, HUD's May 18, 2010, notice proposed the use of a methodology to set FMRs at a more granular level, using areas defined by U.S. Postal Service ZIP Codes in metropolitan areas. For nonmetropolitan areas, HUD would continue to use counties as the basis for publishing FMRs. HUD published its final notice establishing its SAFMR Demonstration on April 20, 2011 (76 FR 22122).

HUD's October 4, 2010 notice (75 FR 61253), established FY 2011 SAFMRs for the HCV program in the Dallas, TX, HMFA. Specifically, the October 4, 2010, notice provided that all PHAs operating in the 8-county, Dallas TX, HMFA are required to use the SAFMRs. Specific SAFMRs for the 8-county Dallas TX, HMFA were provided in Schedule B Addendum to the October 4, 2010, notice. All other programs that use FMRs were instructed to use area-wide FMRs as provided by Schedule B of the notice for Dallas, TX, HMFA.

II. Use of SAFMRs for Project-Based Vouchers in the Dallas Metropolitan Area

HUD's notice requiring the use of SAFMRs has created a concern for the financial viability of some properties with PBVs in the Dallas TX, HMFA. In the PBV program, the amount of rent to the owner may not exceed the lowest of an amount determined by the PHA not to exceed 110% of the FMR, the reasonable rent, or the rent requested by the owner. Some of the Zip Codes in the 8-county, Dallas TX HMFA, SAFMR have FMRs that decreased in value by as much as 35 percent. These decreases may put the some PBV properties at risk for financial failure because the original financing was based on the higher area wide FMR.

As a result, this notice clarifies that PBV units for which a notice of owner selection was issued in accordance with 24 CFR 983.51(d) prior to June 8, 2011, will not be subject to the SAFMRs. This includes PBVs that are currently under a Housing Assistance Payment (HAP) contract. The area-wide FMRs will continue to apply to these PBV units, thus ensuring the viability of PBV projects that were in the development pipeline and had obtained financing based on area-wide FMRs. However, any PBVs for which a notice-of-owner selection is issued after June 8, 2011 will be subject to the SAFMRs.

Dated: May 31, 2011.

Deborah Hernandez,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–14123 Filed 6–7–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2011–N112; 60120–1113–0000–D2]

Endangered and Threatened Wildlife and Plants; Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permits.

SUMMARY: We announce our receipt of applications to conduct certain activities pertaining to enhancement of survival of endangered species. The Endangered Species Act requires that we invite public comment on these permit applications.

DATES: Written comments on this request for a permit must be received by July 8, 2011.

ADDRESSES: Submit written data or comments to the Assistant Regional Director-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486; facsimile 303–236–0027.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal indentifying 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.

Document Availability

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552), by any party who submits a request for a copy of such documents within 30 days of the date of publication of this notice to Kris Olsen, by mail (see **ADDRESSES**) or by telephone at 303–236–4256. All comments we receive from individuals become part of the official public record.

Applications

The following applicants have requested issuance of enhancement of survival permits to conduct certain activities with endangered species pursuant to Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Leigh Espy, Bureau of Land Management, Lakewood, Colorado, TE–43044A.

The applicant requests a permit to remove and reduce to possession *Penstemon penlandii* (Penland beardtongue), *Astragalus osterhoutii* (Osterhout milk-vetch), *Phacelia formosula* (North Park phacelia), and *Eriogonum pelinophilum* (Clay-loving wild-buckwheat) in conjunction with recovery activities throughout the species' ranges for the purpose of enhancing their survival and recovery.

Applicant: Kirk Mammoliti, Roeland Park, Kansas, TE–43046A. The applicant requests a permit to take Topeka shiner *(Notropis topeka)* in conjunction with recovery activities throughout the species' range for the purpose of enhancing its survival and recovery.

Dated: May 24, 2011.

Noreen E. Walsh,

Deputy Regional Director, Denver, Colorado.

[FR Doc. 2011–14221 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–ES–2010–N268; 50120 1113 0000 D2]

Endangered and Threatened Wildlife and Plants; Initiation of 5–Year Reviews of Nine Species: Purple Bean, Clubshell, Roanoke Logperch, Swamp Pink, Northern Riffleshell, Flat-spired Three-toothed Land Snail, Puritan Tiger Beetle, Dwarf Wedgemussel, and Bog Turtle

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review/reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews under the Endangered Species Act of 1973, as amended (Act), of nine species. We conduct these reviews to ensure that our classification of each species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. A 5-year review assesses the best scientific and commercial data available at the time of the review. We are requesting any information that has become available since our original listing of each of these species. Based on review results, we will determine whether we should change the listing status of any of these species.

DATES: To ensure consideration, please send your written information by August 8, 2011.

ADDRESSES: For how and where to send information, see "VIII., Contacts" near end of **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mary Parkin, by U.S. mail at U.S. Fish and Wildlife Service, Northeast Region, 300 Westgate Center Drive, Hadley, Massachusetts 01035; by telephone at 617–417–3331; or by e-mail at *mary_parkin@fws.gov.*

SUPPLEMENTARY INFORMATION:

I. Why do we conduct 5–year reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Then, under section 4(c)(2)(B), we determine whether to remove any species from the List (delist), to reclassify it from endangered to threatened, or to reclassify it from threatened to endangered. Any change in Federal classification requires a separate rulemaking process.

In classifying, we use the following definitions, from 50 CFR 424.02:

(A) *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, that interbreeds when mature;

(B) *Endangered species* means any species that is in danger of extinction throughout all or a significant portion of its range; and

(C) *Threatened species* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

We must support delisting by the best scientific and commercial data available, and only consider delisting if data substantiates that the species is neither endangered nor threatened for one or more of the following reasons (50 CFR 424.11(d)):

(A) The species is considered extinct;

(B) The species is considered to be recovered; or

(C) The original data available when the species was listed, or the interpretation of data, were in error.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing the species we are reviewing.

II. What species are under review?

This notice announces our active 5-year status [reviews] of the species in Table 1.

TABLE 1. CURRENT LISTING STATUS OF SPECIES UNDER 5–YEAR STATUS REVIEW.

Common name	Scientific name	Status	Where listed	Final listing rule publication date and citation
ANIMALS				
Bean, purple	*Villosa perpurpurea*	Endangered	U.S.A. (TN, VA)	January 10, 1997 (62 FR 1647).
Beetle, Puritan tiger	*Cicindela puritana*	Threatened	U.S.A. (CT, MD, MA)	August 7, 1990 (55 FR 32088).
Clubshell	*Pleurobema clava*	Endangered	U.S.A. (AL, IL, IN, KY, MI, OH. PA, TN, WV).	January 22, 1993 (58 FR 5638).
Logperch, Roanoke	*Percina rex*	Endangered	U.S.A. (VA)	August 18, 1989 (54 FR 34468).
Riffleshell, northern	*Epioblasma torulosa rangiana.*	Endangered	U.S.A. (IN, KY, MI, OH, PA, WV).	January 22, 1993 (58 FR 5638).
Snail, flat-spired three-toothed.	*Triodopsis platysayoides*	Threatened	U.S.A. (WV)	July 3, 1978 (43 FR 28932).
Turtle, bog	*Clemmys muhlenbergii*	Threatened	U.S.A. (CT, DE, MD, MA, NJ, NY, PA).	November 4, 1997 (62 FR 59605).
Wedgemussel, dwarf	*Alasmidonta heterodon*	Endangered	U.S.A. (CT, MD, MA, NH, NJ, NY, NC, PA, VT, VA).	March 14, 1990 (55 FR 9447).
PLANTS				
Swamp pink	*Helonias bullata*	Threatened	U.S.A. (DE, GA, MD, NJ, NC, SC, VA).	September 9, 1988 (53 FR 35076).

III. What Do We Consider in Our Review?

We consider all new information available at the time we conduct a 5-year status review. We consider the best scientific and commercial data that has become available since our current listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends (see five factors under heading "How Do We Determine Whether a Species Is Endangered or Threatened?"); and

(E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

We specifically request data from any systematic surveys, as well as any studies or analysis of data that may show any of the following:

(A) Population size or trends;

(B) Species biology or ecology;

(C) The effects of current land management on population distribution and abundance;

(D) The current condition of habitat;

(E) Recent conservation measures that have been implemented to benefit the species;

(F) Current distribution of populations;

(G) Evaluation of threats faced by the species in relation to the five listing factors (as defined below and in section 4(a)(1) of the Act); or

(H) The species' listed status as judged against the definition of threatened or endangered.

IV. How do we determine whether a species is endangered or threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

Under section 4(b)(1) of the Act, we must base our assessment of these factors solely on the best scientific and commercial data available.

V. What could happen as a result of our review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following:

(A) Reclassify the species from threatened to endangered (uplist);

(B) Reclassify the species from endangered to threatened (downlist); or

(C) Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status.

VI. Request for new information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See "What Information Do We Consider in Our Review?" for specific criteria. If you submit information, support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications,

reports, or letters by knowledgeable sources.

Submit your comments and materials to the appropriate Fish and Wildlife Office listed under "VIII., Contacts."

VII. Public Availability of Comments

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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

VIII. Contacts

Send your comments and information on the following species, as well as requests for information, to the corresponding contacts/addresses. You may view information we receive in response to this notice, as well as other documentation in our files, at the following locations by appointment, during normal business hours.

Species	Contact person, phone, e-mail	Contact address
Purple bean	Shane Hanlon, (276) 623–1233 ext. 25; e-mail *shane_hanlon@fws.gov*.	U.S. Fish and Wildlife Service, Southwestern Virginia Field Office, 330 Cummings Street, Abingdon, VA 24210.
Puritan tiger beetle	Andy Moser, (410) 573–4537; *e-mail andy_moser@fws.gov*.	U.S. Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochrane Drive, Annapolis, MD 21401.
Clubshell	Robert M. Anderson, (814) 234–4090 ext. 228; e-mail *robert_m_anderson@fws.gov*.	U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, PA 16801.
Roanoke logperch	Tylan Dean, (804) 693–6694 ext. 104; e-mail *tylan_dean@fws.gov*.	U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, VA 23061.
Northern riffleshell	Robert M. Anderson, (814) 234–4090 ext. 228; e-mail *robert_m_anderson@fws.gov*.	U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, PA 16801.
Flat-spired three-toothed snail.	Barbara Douglas, (304) 636–6586 ext. 19; *e-mail barbara_douglas@fws.gov*.	U.S. Fish and Wildlife Service, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241.
Bog turtle	Alison Whitlock, (413) 253–8536; *e-mail alison_whitlock@fws.gov*.	U.S. Fish and Wildlife Service, Northeast Regional Office, 300 Westgate Center Drive, Hadley, MA 01035.
Dwarf wedgemussel	Susi von Oettingen, (603) 223–2541 ext. 22; e-mail *Susi_vonOettingen@fws.gov*.	U.S. Fish and Wildlife Service, New England Field Office, 70 Commercial Street, Suite 300, Concord, NH 03301.
Swamp pink	Wendy Walsh, (609) 383–3938 ext. 48; e-mail *wendy_walsh@fws.gov*.	U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D, Pleasantville, NJ 08232.

IX. Authority

We publish this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2010.

Anthony D. Léger,

Acting Regional Director, Northeast Region, U.S. Fish and Wildlife Service.

EDITORIAL NOTE: Received in the Office of the Federal Register June 3, 2011.

[FR Doc. 2011–14212 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2011–N106; 10120–1113–0000–F5]

Endangered Plants and Wildlife; Receipt of Application for Enhancement of Survival Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of permit application; request for comments.

SUMMARY: In accordance with the requirements of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), invite the public to comment on applications for permits to conduct enhancement of survival activities with endangered species.

DATES: To ensure consideration, please send your written comments by July 8, 2011.

ADDRESSES: Comments can be sent to the Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Grant Canterbury, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION: The following applicant has applied for a recovery permit to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We are soliciting review of and comments on the application by local, State, and Federal agencies, and the public.

Permit No. TE–043638

Applicant: Directorate of Public Works, U.S. Army, Schofield Barracks, Hawaii.

The permittee requests a permit amendment to take (collect for captive propagation, collect genetic samples, and reintroduce or translocate) Oahu tree snails (*Achatinella* spp.) on Oahu Island, Hawaii, in conjunction with life-history studies for the purpose of enhancing their survival. This permit currently covers more limited take (capture, mark, release, and salvage) of the Oahu tree snails, as well as take of the Hawaiian picture-wing flies (*Drosophila aglaia, D. hemipeza, D. montgomeryi, D. obatai, D. substenoptera,* and *D. tarphytrichia*) and Oahu elepaio (*Chasiempis sandwichensis ibidis*), and removal and reduction to possession of *Chamaescyce herbstii* (akoko), *Hesperomannia arbuscula* (no common name), *Hedyotis coriacea* (kio'ele), *Phyllostegia kaalaensis* (no common name), and *Schiedea kaalae* (no common name), for

which notices were originally published in the **Federal Register** on July 20, 2005 (70 FR 41786), August 6, 2006 (71 FR 47242), November 16, 2007 (72 FR 64665), and June 17, 2008 (73 FR 34312).

Public Comments

We are soliciting public review and comment on this recovery permit application. Submit written comments to the Endangered Species Program Manager (see address above). Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please refer to the appropriate permit number for the application when submitting comments. All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the above address.

Dated: May 21, 2011.

Richard R. Hannan,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2011–14206 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N120; 80221–1113–0000–F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before July 8, 2011.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (*telephone:* 916–414–6464; *fax:* 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (*telephone:* 760–431–9440; *fax:* 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. 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.

Permit No. TE–38521A

Applicant: Phillip A Poirier, Stockton, California.

The applicant requests a permit to take (capture, collect, release, and kill) the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of the species in Sacramento County, California, for the purpose of enhancing the species' survival.

Permit No. TE–38480A

Applicant: Valentine A. Hemingway, Santa Cruz, California.

The applicant requests a permit to take (survey, capture, handle, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–221411

Applicant: Center for Natural Lands Management, Fallbrook, California.

The applicant requests a permit to take (capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–39142A

Applicant: Stanford University, Stanford, California.

The applicant requests a permit to take (survey, capture, handle, and release) the San Francisco garter snake (*Thamnophis sirtalis*) and tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities in San Mateo, Sonoma, Del Norte, and Humboldt Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–39183A

Applicant: Allegra L. Simmons, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–39184A

Applicant: Tara M. Cornelisse, Felton, California.

The applicant requests a permit to take (survey, handle, collect, transport, hold in captivity, and take biological samples) the Ohlone tiger beetle (*Cicindela ohlone*) in conjunction with surveys and genetic analysis in Santa Cruz County, California, for the purpose of enhancing the species' survival.

Permit No. TE–39186A

Applicant: Carlos Alvarado, Sacramento, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–036090

Applicant: Virginia S. Moran, Grass Valley, California.

The applicant requests a permit to remove/reduce to possession the *Galium californicum sierra* (El Dorado bedstraw), *Cordylanthus mollis mollis* (soft bird's-beak), *Cordylanthus palmatus* (Palmate-bracted bird's-beak),

Eriogonum apricum var. *apricum* (lone buckwheat), *Limnanthes floccosa californica* (Shippee meadowfoam), *Oenothera deltoids howellii* (Antioch Dunes evening primrose), *Pseudobahia bahiifolia* (Hartweg's golden sunburst), *Orcutttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Green's awnless Orcutt grass), *Tuctoria mucronata* (Mucronata Orcutt grass), and *Sidalcea keckii* (Keck's checker-mallow) in conjunction with surveys and population monitoring activities on Federal lands throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–037806

Applicant: U.S. Bureau of Land Management, Bakersfield, California.

The applicant requests a permit to take (capture, handle, and release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with surveys and population monitoring activities on lands managed by the Bureau of Land Management in Santa Barbara, San Luis Obispo, Tulare, Kings, Fresno, and Kern Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–39795A

Applicant: Eric L. Scott, Ojai, California.

The applicant requests a permit to take (trap, mark, recapture, handle, provide basic medical care, draw blood, and recover carcasses) the Santa Cruz Island fox (U*rocyon littoralis santacruzae*), Santa Rosa Island fox (*Urocyon littoralis santarosae*), San Miguel Island fox (*Urocyon littoralis littoralis*), and Santa Catalina Island fox (*Urocyon littoralis catalinae*) in conjunction with surveys and population monitoring activities on Santa Cruz Island, Santa Rosa Island, San Miguel Island, and Santa Catalina Island in Ventura and San Diego Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–082237

Applicant: California Department of Parks and Recreation, San Simeon, California.

The applicant requests a permit to take (harass by survey, capture, measure, relocate, and release) the Morro shoulderband snail (*Helminthoglypta walkeriana*) and take (capture, handle, and release) the Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction with surveys, habitat enhancement and population monitoring activities in San Luis Obispo County, California, for the purpose of enhancing the species' survival.

Permit No. TE–132855

Applicant: Carly M. Spahr, Ventura, California.

The applicant requests an amendment to a permit to take (locate and monitor nests) the California least tern (*Sterna antillarum browni*) in conjunction with population monitoring activities in Santa Barbara County, California, for the purpose of enhancing the species' survival.

Permit No. TE–068743

Applicant: University of California, Berkley, California.

The applicant requests a permit to remove/reduce to possession from Federal lands the following species: *Lasthenia conjugens* (Contra Costa goldfields), *Arabis mcdonaldiana* (McDonald's rock-cress), *Calystegia stebbinsii* (Stebbins' morning glory), *Caulanthus californicus* (California jewelflower), *Ceanothus roderickii* (Pine Hill cenothus), *Eremalche kernensis* (Kern Mallow), *Eriogonum apricum* var. *apricum* (lone buckwheat), *Erysimum menziesii* ssp. *eurekense* (Humboldt Bay wallflower), *Fremontodendron decumbens* (Pine Hill flannelbush), *Fritillaria gentneri* (Gentner's fritillara), *Galium californicum* ssp. *sierra* (El Dorado bedstraw), *Gillia tenuiflora* ssp. *arenaria* (sand gilia), *Lasthenia conjugens* (Contra Costa Goldfields), *Layia carnosa* (beach layia), *Monolopia congdonii* (San Joaquin woolly threads), *Piperia yadonii* (Yadon's rein orchid), and *Sidalcea keckii* (Kecck's checkerbloom) in conjunction with seed bank collection activities throughout the range of each species in California, except for San Diego, Imperial, Riverside, Orange, Los Angeles, Ventura, Santa Barbara, San Bernardino, Inyo, and Mono Counties, for the purpose of enhancing the species' survival.

Permit No. TE–42950A

Applicant: California Department of Water Resources, Fresno, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence/absence surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–012137

Applicant: Department of Army, Fort Hunter Liggett, California.

The applicant requests a permit to take (harass by survey, capture, handle, measure, collect biological samples, and release) the arroyo toad (*Anaxyrus californicus*) in conjunction with surveys, population monitoring, and disease testing activities along the San Antonio River on Fort Hunter Liggett, Monterey County, California, for the purpose of enhancing the species' survival.

Permit No. TE–42833A

Applicant: Ian Maunsell, San Diego, California.

The applicant requests a permit to take (survey by pursuit) light-footed clapper rail (*Rallus longirostris levipes*) and Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–43597A

Applicant: Dana H. McLaughlin, Chula Vista, California.

The applicant requests a permit to take (harass by survey, capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–43610A

Applicant: Jessica A. Easley, Sacramento, California.

The applicant requests a permit to take (survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence/absence surveys and population monitoring throughout the range of the species in California for the purpose of enhancing the species' survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Michael Long,

Regional Director, Region 8, Sacramento, California.

[FR Doc. 2011–14219 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS R1–R–2010–N223; 1265–0000–10137–S3]

Grays Harbor National Wildlife Refuge (NWR) and Black River Unit of Nisqually NWR; Comprehensive Conservation Plans and Environmental Assessments

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), intend to prepare comprehensive conservation plans (CCP) for Grays Harbor National Wildlife Refuge (Refuge) and Nisqually National Wildlife Refuge's Black River Unit (Unit) (collectively, Refuges). We will also prepare environmental assessments (EA) to evaluate the environmental effects of the CCPs' various alternatives. We provide this notice in compliance with our CCP policy to advise the public, other Federal and State agencies, and Tribes, of our intentions, and to obtain public comments, suggestions, and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, please send your written comments by July 8, 2011.

ADDRESSES: Information about the Refuge Units is available on our Web sites: *http://www.fws.gov/graysharbor/* and *http://www.fws.gov/nisqually/management/bru_general.html.* Send your comments or requests for information by any of the following methods.

E-mail: FW1PlanningComments@fws.gov. Include "Grays Harbor/Black River CCPs" in the subject line of the message.

Fax: Attn: Jean Takekawa, Project Leader, (360) 534–9302.

U.S. Mail: Project Leader, Nisqually National Wildlife Refuge Complex, 100 Brown Farm Road, Olympia, WA 98516.

FOR FURTHER INFORMATION CONTACT: Jean Takekawa, (360) 753–9467.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing the Refuges' CCPs/EAs. This notice complies with our CCP policy to (1) Advise the public, other Federal and State agencies, and Tribes of our intention to conduct detailed planning on the Refuges; and (2) obtain suggestions and information on the scope of issues to consider in the EAs and during development of the CCPs.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (Refuge System), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify compatible wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCPs at least every 15 years in accordance with the Refuge Administration Act.

Each unit of the Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. At this time we encourage input in the form of issues, concerns, ideas, and suggestions for the future management of the Refuges.

We will conduct the environmental review of this project and develop EAs in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR parts 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

The Refuges

Grays Harbor National Wildlife Refuge

The Refuge's approved boundary encompasses 1,500 acres of estuary and uplands in Grays Harbor County, WA; of this, the Service owns approximately 1,411 acres, and leases 63 acres from the Port of Grays Harbor. The Refuge was established in 1990 for the following purposes.

- To conserve fish and wildlife populations and their habitats, including but not limited to western sandpiper, dunlin, red knot, long-billed dowitcher, short-billed dowitcher, and other shorebirds and migratory birds, including birds of prey.
- To fulfill U.S. international treaty obligations with regard to fish and wildlife and their habitats.
- To conserve those species known to be threatened with extinction.
- To provide opportunities, consistent with the Refuge's wildlife conservation purposes, for wildlife-oriented recreation, education, and research.
- For the development, advancement, management, conservation, and protection of fish and wildlife resources.
- For the benefit of the Service, in performing its activities and services.

The Refuge encompasses an area known as Bowerman Basin. Refuge habitats include open tidal water, intertidal mudflats, tidal salt and brackish marshes, and forests. The Refuge provides important migratory habitat for western sandpiper, dunlin, semi-palmated and black-bellied plover, red knot, short-billed dowitcher, greater yellowlegs, and other shorebird species; common loon, red-breasted and common mergansers, Caspian tern, gulls, double-crested cormorants, and other waterbirds; American wigeon, northern pintail, gadwall, American green-winged teal, bufflehead, mallard, and other ducks; Canada, cackling, white-fronted, and other geese; bald eagle, peregrine falcon, merlin, northern harrier, and other raptors; and many neotropical migratory birds.

Preliminary Issues, Concerns, and Opportunities

The following preliminary issues, concerns, and opportunities have been identified for the Refuge, and may be evaluated in the CCP. Additional issues may be identified during public scoping.

- *Habitat management and restoration.* What management actions are needed to sustain and restore

priority species and habitats over the next 15 years? How is the quality of the Refuge's shorebird habitat being impacted by sedimentation? What effects will climate change and sea level rise have on Refuge habitats and species?

• *Invasive species control.* Invasive species degrade habitat for shorebirds, migratory birds, and many other fish and wildlife. How can we reduce the incidence and spread of invasive species?

• *Visitor experiences and education opportunities.* Wildlife observation, interpretation, and photography, and environmental education are provided at the Refuge. How can we improve these programs? What visitor facilities are needed? What volunteer programs and partnerships can we develop to improve outreach and education? How can we reduce trespassing, vandalism, and other illegal activities on the Refuge, and improve wildlife and habitat protection?

Black River Unit

The Unit is located southwest of Olympia, WA. The Unit's approved boundary encompasses approximately 3,960 acres. The Service currently owns and manages more than 1,300 acres within the approved boundary, and land acquisition activities are ongoing as willing sellers come forward. The Unit was established in 1996 for the following purposes.

• For use as an inviolate sanctuary, or for any other management purpose, for migratory birds.

• For the development, advancement, management, conservation, and protection of fish and wildlife resources.

• For the benefit of the Service, in performing its activities and services.

The Unit consists of a large, complex mosaic of mostly wetland and riparian habitats, and some upland habitats surrounding the low-lying river. Its habitats include the Black River and tributary instream channels, bog (a rare habitat locally), shrub swamp, riparian forest, emergent marsh, wet and dry meadows, and fir-hemlock forest. Both the upper Black River and associated wetlands are unusual features in the Puget Trough. The Unit contains rearing habitat and migration corridors for steelhead, coastal cutthroat trout, and coho and Chinook salmon. At least 150 species of migratory birds, including waterfowl, marshbirds, and neotropical songbirds, use the wetland and riparian habitats. One Federally listed candidate species, the Oregon spotted frog (which is also State listed as endangered), is found within the Unit. The Oregon spotted frog is known to occur at only a few locations in Washington; three of those locations fall within the Unit's approved boundary.

Scoping: Preliminary Issues, Concerns, and Opportunities

We have identified preliminary issues, concerns, and opportunities for the Unit that we may address in the CCP. We have briefly summarized these issues below. During public scoping we may identify additional issues.

• *Land and water protection.* What management actions are needed to sustain and restore priority species and habitats, improve habitat protection and connectivity, and reduce habitat fragmentation? What are our options for improving water quality and quantity for fish and wildlife in the Black River system?

• *Habitat management and restoration.* How can we obtain the data we need, regarding key species and habitat composition, to restore degraded habitats and protect fish and wildlife species? How will climate change and sea level rise affect the Unit's habitats and species? How can we enhance our recovery efforts for the Oregon spotted frog?

• *Invasive species control.* How can we reduce the incidence and spread of invasive species on the Unit?

• *Visitor services and education opportunities.* What wildlife-dependent public uses should we consider at the Unit? How can we reduce trespassing, vandalism, and illegal activities on the Unit and improve wildlife and habitat protection?

Public Meetings

Public meetings will be announced in press releases, planning updates, and on our Web sites: *http://www.fws.gov/graysharbor/* and *http://www.fws.gov/nisqually/management/bru_general.html.*

Public Availability of Comments

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: May 4, 2011.

Robyn Thorson,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 2011–14208 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Revision of Agency Information Collection for the Indian Child Welfare Assistance Annual Report; Request for Comments

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on revision of the collection of information for the Indian Child Welfare Assistance Annual Report, 25 CFR Part 23. The revision affects the form that tribal Indian Child Welfare Act (ICWA) coordinators provide to BIA on a quarterly basis. The information collection is currently authorized by Office of Management and Budget (OMB) Control Number 1076–0131, which expires August 31, 2011.

DATES: Interested persons are invited to submit comments on or before *August 8, 2011.*

ADDRESSES: You may submit comments on the information collection to, or obtain a copy of the draft revised form from, Dr. Linda Ketcher, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street, NW., MS–3070, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Linda Ketcher (202) 513–7610.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking revision of the information collection conducted under the Indian Child Welfare Act (ICWA) and implementing regulations, at 25 CFR part 23. BIA collects the information using a consolidated caseload form, which tribal ICWA program directors fill out. BIA uses the information to determine the extent of service needs in local Indian communities, assess ICWA program effectiveness, and provide data for the annual program budget justification. The responses to the request for information are voluntary and the aggregated report is not considered confidential. BIA is seeking to revise the form to include instructions and more explicit reporting indicators.

II. Request for Comments

BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for proper administration of the ICWA

program, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. This information collection expires August 31, 2011.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.—5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0131.

Title: Indian Child Welfare Assistance Annual Report, 25 CFR part 23.

Brief Description of Collection: Submission of this information by Indian tribes allows BIA to consolidate and review selected data on Indian child welfare cases. The data are useful on a local level, to the tribes and tribal entities that collect it, for case management purposes. The data are useful on a nationwide basis for planning and budget purposes. Response is voluntary.

Type of Review: Extension with revision of a currently approved collection.

Respondents: Indian tribes or tribal entities that are operating programs for Indian tribes.

Number of Respondents: 536 per year, on average.

Total Number of Responses: 2,144 per year, on average.

Frequency of Response: Four times per year.

Estimated Time per Response: One-half hour.

Estimated Total Annual Burden: 1,072 hours, on average.

Dated: June 2, 2011.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. 2011–14220 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of Gaming between the Rosebud Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until August 27, 2011.

Dated: May 31, 2011.

Paul Tsosie,

Chief of Staff, Assistant Secretary—Indian Affairs.

[FR Doc. 2011–14045 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORE00000 L63500000.DO0000.LXSS021H0000.HAG11–0203]

Notice of Intent to prepare a Resource Management Plan for the West Eugene Wetlands Planning Area in the State of Oregon and Associated Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Eugene District Office, Eugene, Oregon, intends to prepare a Resource Management Plan (RMP) with an associated Environmental Impact Statement (EIS) for the West Eugene Wetlands Planning Area and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues. The West Eugene Wetlands Planning Area comprises approximately 1,340 acres of acquired lands that do not have an existing RMP.

DATES: This notice initiates the public scoping process for the RMP with associated EIS. Comments on issues may be submitted in writing until July 8, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM Web site at: *http://www.blm.gov/or/districts/eugene/index.php.* In order to be included in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 30 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the West Eugene Wetlands RMP/EIS by any of the following methods:

- *Web site: http://www.blm.gov/or/districts/eugene/index.php.*
- *E-mail: OR_Eugene_Mail@blm.gov.*
- *Fax:* 541–683–6981.
- *Mail:* P.O. Box 10226, Eugene, Oregon 97440–2226.

Documents pertinent to this proposal may be examined at the Eugene District Office, 3106 Pierce Parkway, Springfield, Oregon 97477.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Richard Hardt, Planning and Environmental Coordinator, telephone 541–683–6690; address P.O. Box 10226, Eugene, Oregon 97440–2226; e-mail *OR_Eugene_Mail@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM

District Office, Eugene, Oregon, intends to prepare an RMP with an associated EIS for the West Eugene Wetlands Planning Area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Lane County, Oregon, and encompasses approximately 1,340 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Threatened and endangered species management; ecosystem restoration; control of noxious weeds and invasive plants; recreation; tribal use including plant collection; evaluation of potential new Areas of Critical Environmental Concern (ACEC) and reevaluation of the existing Long Tom ACEC; land tenure adjustments; and the costs of management. Preliminary planning criteria include:

1. Lands addressed in the RMP will be public lands (including split-estate lands) managed by the BLM. There will be no decisions in the RMP for lands not managed by the BLM;

2. The BLM will protect resources in accordance with the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*), and other applicable laws and regulations;

3. The BLM will use a collaborative and multi-jurisdictional approach, when practical, to determine the desired future condition of public lands;

4. The BLM will strive to make land use plan decisions compatible with existing plans and policies of adjacent local, State, Federal, and tribal agencies, and consistent with other applicable laws and regulations governing the administration of public land;

5. Areas potentially suitable for ACECs and other special management designations will be identified and brought forward for analysis in the RMP. The existing Long Tom ACEC will be re-evaluated to determine if it should continue to be designated as an ACEC. Public nominations for areas potentially suitable for ACECs and other special management designations and public input on the re-evaluation of the existing Long Tom ACEC will be requested;

6. Decisions of the RMP will be consistent with the U.S. Fish and Wildlife Service Recovery Plan for the Prairie Species of Western Oregon and Southwestern Washington.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 30 days after the last public meeting, whichever is later. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan.

The BLM will provide an explanation in the Draft RMP/Draft EIS as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Botany, Wildlife and Fisheries, Lands and Realty, Hydrology, Soils, Archeology, Recreation, Fire and Fuels Management, and Geographic Information Systems.

Authority: 40 CFR 1501.7, 43 CFR 1610.2.

Virginia Grilley,

Eugene District Manager.

[FR Doc. 2011–14086 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLES956000–L14200000–BJ0000–LXSITRST0000]

Eastern States; Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plat Of Survey; Minnesota, Stay Lifted.

SUMMARY: On Thursday, September 9, 2010, there was published in the **Federal Register**, Volume 75, Number 174, on page 54910 a notice entitled "Eastern States: Filing of Plats of Survey". Said notice referenced the stay of the plat of the dependent resurvey of a portion of the South and West boundaries, a portion of the subdivisional lines, and the subdivision of Sections 28–33, and the survey of a tract of land in Section 31 and adjusted record meanders in Sections 31 and 32, in Township 114 North, Range 15 West, of the Fifth Principal Meridian, in the State of Minnesota. This survey was accepted June 22, 2010.

The protest against the survey was dismissed on April 6, 2011 and the plat of survey accepted June 22, 2010, was officially filed in Eastern States Office, Springfield, Virginia, at 7:30 a.m., on May 23, 2011. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $7.50 per copy.

Dated: June 1, 2011.

Dominica VanKoten,

Chief Cadastral Surveyor.

[FR Doc. 2011–14067 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L12200000.NO0000.LLCAD00000]

Final Supplementary Rules for Public Lands Managed by the California Desert District

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: In accordance with the Decision Record for the California Desert District (CDD) Supplementary Rules for Recreation Environmental Assessment, the Bureau of Land Management (BLM), CDD office and the five field offices within the CDD, are issuing Final Supplementary Rules for public lands administered by the BLM.

Upon publication, these Final Supplementary Rules will supersede the Interim Final Supplementary Rules that the BLM published on June 25, 2010. These Final Supplementary Rules are necessary to enhance the safety of visitors, protect natural resources, improve recreation experiences and opportunities, and protect public health. These rules do not impose or implement any land use limitations or restrictions other than those included within the CDD Supplementary Rules for Recreation Environmental Assessment Decision Record.

DATES: The Final Supplementary Rules are effective June 8, 2011.

ADDRESSES: Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Phone: (951) 697–5233. Web site: *http://www.blm.gov/ca/st/en/fo/cdd/cdd_supplementary.html.*

FOR FURTHER INFORMATION CONTACT: Lynnette Elser, Planning and Environmental Coordinator, BLM, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553, *phone:* (951) 697–5233, or *e-mail: lelser@ca.blm.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Visitors to the CDD encounter inconsistent rules regarding appropriate conduct in recreational areas. This inconsistency hampers the BLM's ability to provide a safe recreational experience, and minimize conflicts among users. The BLM is establishing these rules to improve the consistency of rules for public lands within the CDD.

The BLM is establishing these Final Supplementary Rules under the authority of 43 CFR 8365.1–6, which allows BLM State Directors to establish supplementary rules for the protection of persons, property, and public lands and resources.

The CDD is located in southern California and includes all BLM-managed land in Imperial, Inyo, Kern, Riverside, Los Angeles, San Bernardino, and San Diego Counties, California. A map of the area can be obtained by contacting the CDD office (see **ADDRESSES**) or by accessing the following *Web site: http://www.ca.blm.gov.*

All of the Final Supplementary Rules implement decisions contained in the CDD Supplementary Rules for Recreation Environmental Assessment Decision Record (CA–670–10–38). A public involvement process with comment opportunities was employed in developing the decision and associated Environmental Assessment that provide a basis for the Final Supplementary Rules.

The following revisions have been made to the Interim Final Supplementary Rules: The prohibition against public nudity has been revised in response to public comments, and the definition of "Special Recreation Permit" has been revised to correct a citation error in the Interim Final Supplementary Rules. In addition, minor editorial changes were made as follows: (1) The definitions are now arranged in alphabetical order. (2) The terms that are defined are now indicated in italics. (3) Capitalization was corrected in the definition of "Developed sites and areas." (4) The abbreviation "CDD" was added to the definition of "California Desert District." (5) The definition of "California Desert District" was reorganized for clarity, and was revised to state that a map of the California Desert District is available at field offices as well as the district office. (6) The prohibition against use of firewood containing nails was revised grammatically. (7) The punctuation in the "Penalties" provision was corrected. The remaining rules remain unchanged.

The BLM finds good cause under 5 U.S.C. 553(d)(3) to make the Final Supplementary Rules effective on the date of publication because of immediate public safety and resource protection needs within the management area.

II. Discussion

On June 25, 2010, the BLM published a Notice of Interim Final Supplementary Rules for Public Lands Managed by the California Desert District (75 FR 36438). A 30-day public comment period began on the date of publication of the Interim Final Supplementary Rules, and ended on July 26, 2010. The BLM received 41 written comments were received during this period. The BLM has considered all relevant comments during the preparation of these Final Supplementary Rules. The following addresses the main areas of focus of the comments received.

Definitions

The Interim Final Supplementary Rules defined "Special Recreation Permit" as "a permit issued under the authority of 43 CFR 8372.1." In fact, special recreation permits are issued under the authority of 43 CFR part 2930. The BLM has corrected the definition of "Special Recreation Permit" in the Final Supplementary Rules. In addition, the BLM has made the following minor editorial revisions to the definitions: (1) The definitions are now arranged in alphabetical order. (2) The terms that are defined are now indicated in italics. (3) Capitalization was corrected in the definition of "Developed sites and areas." (4) The abbreviation "CDD" was added to the definition of California Desert District." (5) The definition of "California Desert District" was reorganized for clarity, and was revised to state that a map of the California Desert District is available at field offices as well as the district office.

Public Nudity

The Interim Final Supplementary Rules prohibited public nudity "at all developed sites and areas and all [Off Road Vehicle (ORV)] open areas." Several commenters stated that: (1) Nudity is not offensive. (2) The public supports nude recreation. (3) Many people enjoy clothing-optional recreation. (4) The BLM should first research to identify the specific problem then write a rule to address the specific issue. (5) Sexual or lewd acts, not nudity, should be regulated.

The BLM recognizes that clothing-optional recreation is desirable by some individuals and groups. However, it is in the interest of maintaining order to prohibit public nudity in areas where visitor use, recreation opportunities, and/or facilities draw large numbers of visitors. In such areas, public nudity can create controversy and conflicts among users, and cause crowd-control concerns. The intent of the Interim Final Supplementary Rules and the Final Supplementary Rules is to allow lands with a lower concentration of visitors, such as wilderness areas, to be clothing-optional.

One commenter requested that nudity be allowed in traditionally nude areas. The BLM is not aware of any traditionally nude areas that would be affected by these Final Supplementary Rules.

Several commenters did not understand the definition of the land that would be regulated under this rule, and expressed a concern that a nude recreational user could inadvertently enter a clothing-required area. The BLM has modified the Interim Final Supplementary Rules in response to this concern. The Interim Final Supplementary Rules prohibited public nudity "at all developed sites and areas and all ORV open areas," and included the definition of "developed sites and areas" that is codified at 43 CFR 8360.0–5(c). In the Final Supplementary Rules, the BLM has modified the prohibition against public nudity so that compliance will be possible without referring to the definition of "developed

sites and areas." Instead, the areas where public nudity is prohibited are listed in the prohibition itself: (1) Developed camping and picnicking areas containing items such as a table or toilet facility, (2) visitor centers, and (3) all ORV open areas. The BLM has determined that this rule, as modified, provides sufficient clarity. Although the term "developed sites and areas" no longer appears in the prohibition against public nudity, it appears in other Final Supplementary Rules and is therefore included in these Final Supplementary Rules.

One commenter requested that the BLM follow the California State Cahill policy, which allows nude recreation unless there is a complaint. Unlike the BLM's adoption of the State's definition of "nudity" in these rules, the California State Cahill policy would be at odds with our goals to reduce the potential for controversy, conflicts among users, and crowd-control concerns in areas that draw large numbers of visitors. Therefore, the BLM has decided not to adopt that policy.

One commenter stated that a San Francisco court ruled that a female has the same right to be topless as a male. That ruling does not apply to public lands managed by the BLM.

Passengers in ORVs and Trailers

The Interim Final Supplementary Rules prohibited riding in, or transporting any person in or on, "a portion of an ORV or trailer that is not designed or intended for the transportation of passengers." The BLM will finalize the rule as written in the Interim Final Supplementary Rules.

Some commenters expressed concern that this rule would not allow riding in truck beds, which they enjoy. This rule is specifically intended to prohibit riding in truck beds, since this is a dangerous practice. Should the truck be involved in an accident, or travel through rough terrain, the passengers in the truck bed could be thrown from the vehicle and injured. This rule is consistent with the California Vehicle Code 23116, which also prohibits riding in a truck bed. One commenter was concerned that utility vehicles with mounted, harnessed seats would not be allowed. A mounted, harnessed seat designed for passenger use is allowed under this rule.

Firewood Materials

The Interim Final Supplementary Rules prohibited the use and possession of "any firewood materials containing nails, screws, or other metal hardware, including, but not limited to, wood pallets and/or construction debris." Many commenters stated that nails in firewood is not the problem, but that the real problem is that the nails are not picked up and discarded properly. One commenter requested that the BLM remove the nails from the fire rings after use.

The BLM agrees that the problem is nails that remain after wood has been burned. Past experience clearly shows that nails are not removed from the fire pits for proper disposal. It is not cost efficient or effective for the BLM to determine if nails are in each fire pit. Recreational opportunities on BLM-managed land include allowing recreational users to create fire pits near their campsites. The location of the fire pits often change with each camper. In many areas the wind will blow dirt over a past pit, covering the remaining debris left in the pit. A vehicle may drive over a spot that was previously used as a fire pit and experience tire damage from nails. Due to the level of damage and injury that can occur and the realistic ability to manage nails, the BLM will adopt the rule as published in the Interim Final Supplementary Rules, with the following minor editorial change to correct a grammatical error: The Interim Final Supplementary Rule began, "It is prohibited to use as firewood, or have in their possession, any firewood materials containing nails .* * * ." The Final Supplementary Rule begins, "It is prohibited to use as firewood, or possess, any firewood materials containing nails * * * ."

Glass Beverage Containers

The Interim Final Supplementary Rules prohibited the possession of glass beverage containers "in all developed sites and areas and all ORV open areas." Numerous commenters stated that they prefer beer and wine in bottles rather than other types of containers. They stated that bottles left as debris was the main issue.

The BLM agrees that bottles left as trash is the main issue. However, since the bottles left as trash often break and are a safety hazard to people and tires, the BLM has determined that the rule should remain as published in the Interim Final Supplementary Rules.

One commenter stated that the use of glass containers for items such as pickles should be allowed. This type of glass container is allowed under the rule as written. Only glass containers that hold beverages are regulated by this rule. The BLM has noted that the majority of broken, discarded glass left on public land is from beverage containers. Other types of glass containers are not major contributors to this situation.

Some commenters on the glass beverage rule were concerned that employees of the BLM would enter their vehicles or camping facilities to search for glass containers. The BLM does not see any reason to modify the rule in response to these comments.

Non-Flexible Objects

The Interim Final Supplementary Rules prohibited placing into the ground any non-flexible object such as, but not limited to, metal or wood stakes, poles, or pipes, with the exception of small tent or awning stakes, at all developed sites and areas and all ORV open areas.

Several commenters stated that they enjoy playing horseshoes, which would not be allowed under this rule. Horseshoes can still be played by using a post that is not mounted in the ground or that is somewhat flexible.

Another commenter stated that mounting a display flag, solar lights, and windscreens should be allowed. These items may be mounted either to the user's vehicle or to the ground using a small stake. Another commenter stated that a stuck vehicle may require a winch and a non-flexible object to move the vehicle. A spare tire can be used with a winch to move a stuck vehicle.

One commenter requested that the BLM define "small stake". A "small stake" is one which is necessary to hold awnings or tents in place. If a larger-than-usual stake is necessary due to windy or stormy weather, that stake would be a "small stake" in those circumstances.

One commenter requested the allowance of stakes or non-flexible objects marked with orange survey tape. It is the BLM's judgment that non-flexible objects, even when marked, can be difficult to avoid and therefore cause impact injuries. Marked non-flexible objects are prohibited in the Final Supplementary Rules, and this provision has been adopted as published in the Interim Final Supplementary Rules.

Competition Hill

The Interim Final Supplementary Rules prohibited camping within the areas commonly known as Competition Hill Corridor and Competition Hill located within the Dumont Dunes ORV Area, as shown on the map at the entrance kiosk. No comments were received for this provision, and it has been adopted as published in the Interim Final Supplementary Rules.

Reserving Camping Space

The Interim Final Supplementary Rules prohibited reserving or saving a

camping space for another person at all developed sites and areas and all ORV open areas. Some commenters stated that saving spaces is necessary and this rule would prevent them from camping with friends and family when the arrival time is different. They also stated that "wagon wheel" camping would not be feasible with this rule. The BLM agrees that this provision may make it more difficult for groups to camp together in popular places, but also supports equal access for all recreational users. This provision has been adopted as published in the Interim Final Supplementary Rules.

Trash and Litter

The Interim Final Supplementary Rules required all persons to keep their sites free of trash and litter during the period of occupancy. One commenter questioned whether this rule would require someone to pick up the trash left by a previous occupant of the area. To clarify, a new occupant is required to keep the site free of trash, regardless of who discarded the trash. This provision has been adopted as published in the Interim Final Supplementary Rules.

Penalties

Several commenters requested that the BLM increase the fees for violations, increase jail time for offenders, and confiscate the vehicles of offenders. These consequences are set by Federal statutes and regulations and are beyond the authority of this rule making. One commenter requested that the BLM issue "fix it" tickets for trash violations. It is unnecessary to include this type of provision in the Final Supplementary Rules because law enforcement officers already have the authority and discretion to request that campers clean up their sites without imposing penalties. This provision has been adopted as published in the Interim Final Supplementary Rules, with the following minor editorial changes: The citation to Section 303(a) of the Federal Land Policy and Management Act is now in closed parentheses, the word "and" has been added before the citation to 43 CFR 2932.57(b), and one of the parentheses after the citation to 43 CFR 2932.57(b) has been removed.

Other Comments

Some comments were not relevant to this rulemaking, and instead provided information and opinions on other management issues. One commenter asked the BLM to define camping. The Interim Final Supplementary Rules included a definition of "camp," and the BLM sees no reason to change that definition in the Final Supplementary Rules. A few commenters stated that new rules were not required, that the BLM should enforce the existing rules, and that the BLM should have more pressing things to do. Several commenters expressed support for many of the rules. The BLM did not revise these rules in response to these comments.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These Final Supplementary Rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. They will not have an effect of $100 million or more on the economy. They do not affect commercial activity. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, environment, public health or safety, or state, local, or tribal governments or communities. They will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. They do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These Final Supplementary Rules merely contain rules of conduct for public use of public land and provide a consistent set of rules of public conduct within the CDD.

National Environmental Policy Act (NEPA)

The BLM has prepared an Environmental Assessment (CA–670–10–38) and has determined that the Final Supplementary Rules would not constitute a major Federal action significantly affecting the quality of the human environment and therefore the preparation of an environmental impact statement was not necessary, 42 U.S.C. 4332(2)(C). The EA was posted on the CDD website and was available for a 30-day public comment period from October 20, 2009 through November 20, 2009. A Finding of No Significant Impact was signed February 1, 2010 and a Decision Record was signed February 1, 2010.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These Final Supplementary Rules merely establish rules of conduct for public recreational use of specific public lands. Therefore, the BLM has determined under the RFA that these Final Supplementary Rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These Final Supplementary Rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). These rules merely establish rules of conduct for recreational use of certain public lands and do not affect commercial or business activities of any kind.

Unfunded Mandates Reform Act

These Final Supplementary Rules do not impose an unfunded mandate on state, local or tribal governments or the private sector of more than $100 million per year; nor do these rules have a significant or unique effect on state, local, or tribal governments or the private sector. These Final Supplementary Rules have no effect on state, local, or tribal governments and do not impose any requirements on any of these entities. Therefore, the BLM has determined that no statement is required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These Final Supplementary Rules do not represent a government action capable of interfering with constitutionally protected property rights. These rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these Final Supplementary Rules would not cause a "taking" of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These Final Supplementary Rules will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. These rules do not conflict with any California state law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these rules do not

have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM California State Office has determined that these supplementary rules would not unduly burden the judicial system and that they meet requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these Final Supplementary Rules do not include policies that have tribal implications. The rules do not affect Indian resource, religious, or property rights.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These Final Supplementary Rules do not comprise a significant energy action. The rules will not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Paperwork Reduction Act

These Final Supplementary Rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Information Quality Act

In developing these Final Supplementary Rules, the BLM did not conduct or use a study, experiment or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Author

The principal author of these Final Supplementary Rules is Lynnette Elser, Planning and Environmental Coordinator, BLM California Desert District.

SUPPLEMENTARY RULES FOR LANDS MANAGED BY THE BLM CALIFORNIA DESERT DISTRICT OFFICE

For the reasons stated in the Supplementary Information Section, above, and under the authority of 43 CFR 8365.1–6, the California State Director, Bureau of Land Management, issues supplementary rules for public lands managed by the California Desert District (CDD), to read as follows:

Section 1—Definitions

BLM California Desert District means public land, managed by the BLM, totaling over 11 million acres, primarily in the southern and eastern portions of California. The California Desert District (CDD) office is located in Moreno Valley, California and, under the authority of the District Manager, provides coordination and oversight to the five field offices of the CDD. The CDD includes all of the land managed by the BLM Ridgecrest Field Office, the BLM Barstow Field Office, the BLM Palm Springs-South Coast Field Office, the BLM Needles Field Office, and the BLM El Centro Field Office. A map of this land is available at the CDD office and at the field offices listed above.

Camp means day or overnight use of a tent, trailer, motor coach, fifth wheel, camper, or similar vehicle or structure.

Developed Sites and Areas means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access. This definition is consistent with 43 CFR part 8360.

Nudity means nudity as defined by 14 California Code of Regulations § 4322.

Off Road Vehicle (ORV) means ORV as defined by 43 CFR 8340.0–5.

Public Nudity means nudity in a place where a person may be observed by another person.

Special Recreation Permit means a permit issued under the authority of 43 CFR part 2930.

Section 2—Supplementary Rules

The following rules apply on public lands administered by the BLM CDD unless explicitly authorized by a permit or other authorization document issued by the BLM:

1. Public nudity is prohibited at all: (1) Developed camping and picnicking areas containing items such as a table or toilet facility, (2) visitor centers, and (3) all ORV open areas.

2. It is prohibited for a person to ride in or transport another person in or on a portion of an ORV or trailer that is not designed or intended for the transportation of passengers.

3. It is prohibited to use as firewood, or possess, any firewood materials containing nails, screws, or other metal hardware, including, but not limited to, wood pallets and/or construction debris.

4. Possession of glass beverage containers is prohibited in all developed sites and areas and all ORV open areas.

5. It is prohibited to place into the ground any non-flexible object, such as, but not limited to, metal or wood stakes, poles, or pipes, with the exception of small tent or awning stakes, at all developed sites and areas and all ORV open areas.

6. It is prohibited to camp within the areas commonly known as Competition Hill Corridor and Competition Hill located within the Dumont Dunes ORV Area, as shown in the map at the entrance kiosk.

7. It is prohibited to reserve or save a camping space for another person at all developed sites and areas and all ORV open areas.

8. All persons must keep their sites free of trash and litter during the period of occupancy.

Employees and agents of the BLM are exempt from these rules during the performance of specific official duties as authorized by the CDD Manager, or the Ridgecrest, Barstow, Needles, Palm Springs-South Coast or El Centro Field Managers.

Section 3—Penalties

On public lands under Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 2932.57(b), any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more than 12 months, or both.

Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571. Those who violate these rules may also be subject to civil action for

unauthorized use of the public lands, violations of special recreation permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit under 43 CFR 2932.57(b)(2).

James Wesley Abbott,

Acting State Director, California State Office.

[FR Doc. 2011–14165 Filed —; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDI01000–10–L12200000.AL0000]

Final Supplementary Rules for the Upper Snake Field Office, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rules.

SUMMARY: The Bureau of Land Management (BLM) is finalizing

supplementary rules for all BLM-managed public lands within the approximate 119 miles of river corridor addressed in the Snake River Activity/Operations Plan Revision Environmental Assessment (hereafter referred to as the Snake River Plan), which was developed jointly by the BLM and the U.S. Forest Service (USFS) and approved July 8, 2008. The Decision Record for the Snake River Plan identifies implementation level decisions which describe an array of management actions designed to conserve natural and cultural resources on lands managed by the BLM and the USFS while providing for recreational opportunities in the area. These supplementary rules will help enforce the decisions in the Snake River Plan and will be enforced on lands managed by the BLM.

DATES: These supplementary rules are effective July 8, 2011.

ADDRESSES: You may direct inquiries to the Bureau of Land Management, Upper Snake Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401; or by *e-mail: Shannon_Bassista@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Field Manager, BLM Upper Snake Field Office at (208) 524–7500. Contact Ron Dickemore, USFS Palisades Ranger District, for information concerning enforcement on lands managed by the USFS (208) 523–1412.

SUPPLEMENTARY INFORMATION:

I. Background

The Snake River Plan covers approximately 119 miles of river corridor and adjacent public lands in southeast Idaho, including the South Fork of the Snake River (South Fork) from Palisades Dam to the confluence with the Henry's Fork of the Snake River (Henry's Fork), the Henry's Fork from St. Anthony to its confluence with the South Fork, and the main stem of the Snake River (Main Snake) from the confluence south to Market Lake Canal below Lewisville Knolls. A map entitled "The Snake River Planning Area" is available at the BLM Upper Snake Field Office, located at the address in the **ADDRESSES** section of this notice.

During the Snake River Plan planning process, the BLM and the USFS gathered public scoping information using a variety of methods over a three-year period. Initially, the BLM created traveling kiosks to provide information about the planning process. The kiosks were placed at key locations in the greater planning area and contained comment cards that helped generate an interested public list. The BLM then distributed multiple mailings to over 1,000 people with each mailing and received comments concerning the management directions for the plan. The mailing list included all members of the public who supplied their addresses during public scoping events, as well as South Fork season pass holders. BLM staff hosted multiple public scoping meetings, presented the Snake River Plan to interested groups (e.g., local fishing clubs, county commissioners, water user groups), and received numerous comments.

The BLM consulted the Shoshone-Bannock Tribes over the course of the planning timeframe. Multiple scoping meetings with the Shoshone-Bannock Tribes Fort Hall Business Council, Environmental Management staff, and Fish and Wildlife staff were held. The BLM received tribal comments on the proposed management actions and recreation issues. In addition, the draft plan was reviewed by the Shoshone-Bannock Tribes, and the BLM incorporated comments into the Decision Record for the Snake River Plan.

These supplementary rules will help the BLM achieve management objectives and implement the Snake River Plan's decisions. These supplementary rules will also allow the BLM to enforce the decisions to help prevent damage to natural resources, provide for public health, and provide for safe public recreation. These supplementary rules supersede the following notices: (1) Notice of Emergency Closure of Public Lands, Idaho, 53 FR 8701 (March 16, 1988); (2) Notice of Seasonal Restrictions and Limited Land Use, Closure Order, Idaho, 57 FR 27264 (June 18, 1992); and (3) Notice of Sanitation and Special Recreation Permit Requirements on the South Fork of the Snake River, 60 FR 19762 (April 20, 1995).

II. Discussion of Public Comments

The BLM Upper Snake Field Office proposed supplementary rules in the **Federal Register** on August 31, 2010 (75 FR 53335). Public comments were accepted by mail and/or email for a 30-day period ending on September 30, 2010. The BLM received 11 comments concerning the boundary of the Stinking Springs human entry closure. One comment suggested the use of fire blankets instead of fire pans, and one comment requested prohibiting recreational vehicle (RV) owners from dumping their tanks at the dump station at Byington. The Idaho Department of Parks and Recreation (IDPR) commented about off-highway vehicle (OHV) use in Kelly Island Campground and expressed concern that the OHV definition is vague in the proposed supplementary rules.

III. Discussion of Supplementary Rules

These final supplementary rules apply to BLM-managed lands located along 119 miles of river corridor that were analyzed in the Snake River Plan. These final supplementary rules are necessary to protect natural resources on public land and provide for the public's health and safety. These final supplementary rules will implement decisions outlined in the Decision Record for the Snake River Plan signed on July 8, 2008. Maps that pertain to the final supplementary rules will be available at the BLM office in Idaho Falls and on the following BLM *Web site: http://www.blm.gov/id/st/en/fo/upper_snake/snake_river_plan_maps.html.* All management decisions are proposed under the authority of 43 CFR 8341.1, 8364.1, 8365.1–4, and 9268.3. Please see the preamble for the proposed supplementary rules (75 FR 53335–53336) for further discussion of the supplementary rules.

The final supplementary rules incorporate changes based on the comments mentioned in the previous section titled "Discussion of Public Comment." Internal review led to some technical changes in grammar and formatting. All Web site changes from the proposed supplementary rules to the final supplementary rules were due to Web site design changes at the BLM Idaho state office level. The following paragraphs explain all major changes and reasoning behind the changes from the proposed supplementary rule to the final supplementary rule. Supplementary rules that are not discussed in this preamble either received no public comment or remain as proposed.

The definitions were moved to the beginning of the supplementary rules in order to facilitate their use.

Most of the comments received were in response to the Stinking Springs seasonal human entry closure. Local skiers and snowshoers requested that the size of the human entry closure boundary be reduced to allow more area for winter recreation activities. The BLM consulted with the Idaho Department of Fish and Game and reviewed big game data collected over the last four years. Biologists determined that there was a lack of wintering big game in the areas requested for exclusion from the human

entry closure. Therefore, the boundary of the Stinking Springs human entry closure has been altered to accommodate recreation requests. The legal description in Rule 7(c) has been changed to reflect the altered boundary, the total acreage of the closure has been added, and the address where the official plat is located has been added.

The IDPR requested that OHVs be allowed to enter and exit Kelly Island Campground without being trailered. The campground is compact, does not provide the road capacity needed to accommodate OHV traffic, and is crowded with pedestrians. The proposed supplementary rules would have required visitors to unload OHVs in designated areas near the entrance of the campground, allowing them the opportunity to ride on local trails while camping at Kelly Island. No change is reflected in the final supplementary rules concerning this comment. The IDPR also recommended a change in the OHV definition to make it more clear, more concise, and consistent with Idaho State Code. The BLM Idaho program lead for trails, OHV use, and travel management coordinated with the IDPR program lead for motorized travel to develop a definition that meets both the BLM and Idaho State Code standards. The OHV definition in the final supplementary rules has been modified to address the needs of both agencies.

The area description to which the final supplementary rules apply has been changed in both Rule 5(a) and Rule 10. In Rule 5(a) the area description was changed from "the 119-mile river corridor" to the "Snake River planning area." In Rule 10 the area description was changed from "designated recreation sites or areas identified by a BLM map or sign" to the "Snake River planning area." The phrase "Snake River planning area" provides more precise guidance for law enforcement and can be portrayed accurately and more easily on a single map for the general public. The area descriptions in the proposed supplementary rules were vague and would also need many maps to be identified, versus just one map. In addition, the description "119-mile river corridor" does not set clear boundaries for law enforcement to know where to enforce the supplementary rules (*e.g.,* enforce supplementary rules when they can see the river, enforce supplementary rules when they are ¼ mile from the river, etc.). Although the area descriptions are now called "the Snake River planning area" in the final supplementary rules, the public lands included under the final supplementary rules are the same lands that would have been encompassed by the proposed supplementary rules.

The title of Rule 10 was changed from "Parking Restrictions" to "Parking Restrictions and Regulatory Signs." The term "Parking Restrictions" does not entirely apply to directional parking signs. Therefore, the term "Regulatory Signs" was added to include all signs posted at BLM-managed sites and locations within the Snake River planning area.

The comment requesting the use of fire blankets instead of fire pans was not incorporated in the final supplementary rules. To properly use a fire blanket, dirt must be dug up with each use and piled on the blanket to prevent scorching. Significant resource damage and vegetative impacts would occur if fire blankets were allowed along with or instead of fire pans in the Snake River planning area.

Rule 5(c) was added to clarify that RV owners are prohibited from emptying their tanks in the dump station at Byington boat access. The capacity of the dump station vault at Byington is a fraction of the size needed to accommodate multiple RV tanks. The dump station at Byington was installed to allow visitors to empty their portable toilets after multiple-night float trips and does not have the capacity to accommodate multiple RV tanks as well. It is also unsanitary for both river users emptying portable toilets and RV owners emptying tanks to use the same facility.

The following changes were made in Rule 7(a):

- The word "most" was added to a sentence in Rule 7(a) that described the open roads in the planning area. As written in the proposed supplementary rules, the sentence stated that "the" open roads in the planning area are located within the developed recreation site boundaries. That phrasing may have been confusing for law enforcement and the general public because it implied that the only open roads in the Snake River planning area are within developed recreation sites. The addition of the word "most" indicates that some of the open roads in the Snake River planning area are not within developed recreation site boundaries;
- A reference to "red boundary lines" on the maps of developed recreation sites was added in order to make these maps authoritative for BLM employees, volunteers, and the general public; and
- A reference to a Web site was corrected.

The final supplementary rule now reads in pertinent part, "Most open roads in the planning area are located within the developed recreation site boundaries and are identified by maps (red boundary lines) and/or legal descriptions available at the BLM Upper Snake Field Office and at the following Web site: *http://www.blm.gov/id/st/en/fo/upper_snake/snake_river_plan_maps.html*."

In the final supplementary rule titled "Exceptions," a reference to a Web site was corrected.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. These final supplementary rules will not have an effect of $100 million or more on the economy. These final supplementary rules will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients; nor do they raise novel legal or policy issues. These final supplementary rules will not affect legal commercial activity, but merely restrict or prohibit, in a reasonable manner, certain public conduct and uses of a limited area of public lands.

National Environmental Policy Act

The BLM and USFS prepared an Environmental Assessment (EA) (ID–310–2006–EA–3398) for the Snake River Activity/Operations Plan Revision, and found that the management direction implementing the plan decisions will not constitute a major Federal action significantly affecting the quality of the human environment under Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The BLM has placed the EA, Finding of No Significant Impact (FONSI), and Decision Record on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The EA and FONSI are also located on the following BLM Upper Snake Field Office Web site: *http://www.blm.gov/id/st/en/fo/upper_snake.html.*

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. These final supplementary rules conserve natural and cultural resources and protect public health and safety, while providing for recreational opportunities in the area. Therefore, the BLM has determined under the RFA that these final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

These final supplementary rules do not constitute a major rule as defined at 5 U.S.C. 804(2). These final supplementary rules merely protect public health and safety and conserve natural and cultural resources, while providing for recreational opportunities in the area and do not:

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

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

These final supplementary rules do not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year; nor do these final supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. These final supplementary rules have no effect on State, local, or tribal governments and do not impose any requirements on any of these entities. These final supplementary rules merely impose reasonable limitations or prohibitions on certain public conduct and uses of a limited area of public lands. These final supplementary rules will conserve natural and cultural resources, and protect public health and safety, while providing for recreational opportunities in the area. Therefore, the BLM has determined that a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

These final supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The final supplementary rules do not address property rights in any form, and do not cause the impairment of one's property rights. Therefore, the BLM has determined that these final supplementary rules would not cause a "taking" of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

These final supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. These final supplementary rules do not conflict with any Idaho State law or regulation. Therefore, in accordance with Executive Order 13132, the BLM has determined that these final supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Idaho State Office of the BLM has determined that these final supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these final supplementary rules do not include policies that have tribal implications. Government-to-Government consultation was conducted with the Shoshone-Bannock Tribes over the course of the planning effort.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

These final supplementary rules do not comprise a significant energy action. These final supplementary rules will not have an adverse effect on energy supply, production, or consumption and have no connection with energy policy.

Paperwork Reduction Act

These final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Author

The principal author of these final supplementary rules is Shannon Bassista, Outdoor Recreation Planner, Bureau of Land Management.

For the reasons stated in the Preamble and under the authority of FLPMA, 43 U.S.C. 1733(a) and 43 CFR 8365.1–6, the Upper Snake Field Office, BLM, proposes to issue supplementary rules for BLM managed lands covered by the Snake River Plan, to read as follows:

Supplementary Rules for the Snake River Planning Area Identified Definitions

For purposes of these supplementary rules, the following definitions apply unless modified within a specific part or regulation:

Camping means erecting a tent or a shelter of natural or synthetic materials, preparing a sleeping bag or other bedding material for use, or parking a motor vehicle, motor home, or trailer for the purpose or apparent purpose of overnight occupancy.

Designated campsite means a specific location identified by the BLM for camping. Designated campsites could include individual sites in developed campgrounds and developed recreation sites for camping that may or may not contain picnic tables, shelters, parking sites, and/or grills. All designated campsites are identified by a BLM map or sign.

Developed recreational site means any site or area that contains structures or capital improvements primarily used by the public for recreation purposes. Such areas or sites may include: Delineated spaces or areas for parking, camping or boat launching; sanitation facilities; potable water; grills or fire rings; tables; or controlled access.

Off-highway vehicle (OHV) means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle not licensed for highway use

(not street legal), excluding: (1) Any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (2) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (3) vehicles in official use; and (4) any combat or combat-support vehicle when used in times of national defense emergencies.

Refer to Idaho Code 67–7101 for definitions of an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle.

1. Firearms and Target Shooting

a. The discharge of any weapons (*i.e.,* projectiles, firearms, muzzleloaders), including those used for target shooting, within the boundaries or within 250 yards of developed recreation sites or areas is prohibited. Boundaries are defined by perimeter fences and/or the gravel or asphalted parking areas and site roads. Developed recreation site boundaries are identified by maps and/or legal descriptions available at the BLM Upper Snake Field Office and at the following Web site: *http://www.blm.gov/id/st/en/fo/upper_snake/snake_river_plan_maps.html.* All firearm and target shooting rules will apply to new recreation sites as they are developed.

b. The discharge of weapons of any kind is prohibited year-round on BLM lands at North Menan Butte (*i.e.,* all trails, parking areas, or any BLM lands on the slopes and crater of the butte).

c. Any object containing glass or other material that can shatter and cause a public safety hazard must not be used for target shooting.

d. All shooting materials, including spent brass or shells, their containers, and any items used as targets, must be removed and properly disposed of.

2. Length of Stay

All camping within the planning area is subject to a 5-day camping limit within any period of 19 consecutive days. The 5-day limit may be reached either through 5 separate visits or 5 days of continuous occupation during the 19-day period. After the 5-day limit has been reached, campers must move outside of a 20-mile radius of the previous location and not return to that location for 14 days. Exceeding length of stay limits, as indicated by a BLM sign or map, is prohibited.

3. Camping

a. You must only camp in sites or areas designated as open to camping by a BLM sign or map.

b. Camp Areas Accessed by Vehicle or by Foot Travel: At the Kelly Island Campground and Wolf Flats Recreation Area visitors must camp in designated sites identified by a fire ring and/or picnic table. Camping outside of the boundaries defined by barriers such as post and cable or buck and pole fence is prohibited. As undeveloped camping areas within the Upper Snake Field Office are developed by the BLM through the addition of fire rings, restrooms, picnic tables, etc., visitors must camp in identified designated sites at the developed camping locations.

c. Camp Areas Accessed by Floating/Boating: You must camp in designated sites identified by a sign or map between Palisades Dam and Byington boat access. You must camp in designated sites along the rest of the river corridor as they become designated.

d. You must not leave personal belongings overnight in an unattended campsite.

e. You must keep campsites free of trash, litter and debris during the period of occupancy.

f. You must remove all personal equipment and clean campsites upon departure.

g. You must not camp within a 400-meter radius of active Bald Eagle nests, which are indicated by a BLM sign or map. Areas within a 400-meter radius of active Bald Eagle nests are closed to human entry from February 1 to July 31 each year.

These supplementary rules supersede the Notice of Seasonal Restrictions and Limited Land Use, Closure Order, Idaho that the BLM published in the **Federal Register** on June 18, 1992 (57 FR 27264).

4. Permits

You must complete and possess a self-issue permit when using overnight designated campsites that are exclusively accessed by boat. Visitors are required to provide one completed copy for the BLM and maintain an additional copy throughout their overnight camping trip. These supplementary rules supersede the Notice of Sanitation and Special Recreation Permit Requirements on the South Fork of the Snake River which the BLM published in the **Federal Register** on April 20, 1995 (60 FR 19762).

5. Human Waste Disposal

a. You must remove solid human waste and toilet paper from the Snake River planning area. You must use a human waste carryout system (e.g., sealable portable toilet, or a landfill approved biodegradable double bag system). The landfill approved biodegradable system must be made from puncture resistant materials and contain non-toxic powder and decay catalyst that breaks down solid waste and turns liquid waste to a solid for hygienic and spill-proof transport.

Rule 5(a) does not apply where waste disposal facilities are provided (e.g., Kelly Island Campground and Wolf Flats Recreation Area).

b. Any portable toilet system must be reusable, washable, water tight, and portable toilet and/or RV-dump compatible. Portable toilets with snap-on lids, such as ammo cans or plastic buckets, are required to have a rubber gasket to prevent leaks and spills. Plastic bag liners are not acceptable with the exception of a landfill approved biodegradable double bag system addressed in Rule 5(a).

c. It is prohibited for RV owners to empty their tanks in the dump station at Byington boat access or other vault toilet facilities within the planning area.

These supplementary rules supersede the Notice of Sanitation and Special Recreation Permit Requirements on the South Fork of the Snake River, which the BLM published in the **Federal Register** on April 20, 1995 (60 FR 19762).

6. Campfires and Wood Collecting

a. You must not cut any trees for commercial or private use. You must not remove branches and other parts of the trees that are still attached to the tree unless a BLM permit is issued.

b. You may only collect dead and downed wood for campfires in reasonable amounts. The collected reasonable amount is determined by the amount an average person could haul or carry without the use of a machine.

c. Girdling (making a band around the trunk of a tree by removing a strip of bark) or damaging trees in the planning area is prohibited. The use of chainsaws is prohibited.

d. Fire Pan and Ash Removal: An approved fire pan is a durable, metal pan at least 12-inches x 12-inches wide, with at least a 3-inch lip around its outer edge and sufficient to contain a fire and its remains. Visitors must elevate fire pans off the ground to prevent scorching of the soil. If the fire pan does not have legs to elevate it, rocks must be placed underneath the corners of the fire pan. All ash must be removed and carried out of the river corridor in a sealed container or durable bag.

e. Camp Areas Accessed by Vehicle or by Foot Travel: Unless the BLM installs a fire ring, you must use a fire pan and carry out all ash from undeveloped dispersed camping sites and public lands within the Snake River planning area. All fires must be fully contained in

a metal fire grate, fire pan, or other metal device to contain ashes. Mechanical stoves and other appliances that are fueled by gas and equipped with a valve that allows the operator to control the flame are allowed.

f. You must not start or maintain a fire in sites or areas not designated as open for such use by a BLM sign or map.

g. Camp Areas Accessed by Floating/Boating: You must use a fire pan and carry out all ash prior to abandoning the site.

h. When starting or maintaining a fire outside of a developed recreation site, you must contain and dispose of fire ashes and debris as indicated by a BLM sign or map.

i. You must not burn wood or other material containing nails, glass, or any metal.

7. General Travel Management

a. You must not enter an area designated closed by a BLM sign or map by means of motorized vehicle, including off-highway vehicles (OHVs). Most open roads in the planning area are located within the developed recreation site boundaries that are identified by maps (red boundary lines) and/or legal descriptions available at the BLM Upper Snake Field Office and at the following *Web site: http://www.blm.gov/id/st/en/fo/upper_snake/snake_river_plan_maps.html.* Site roads and trails open to motorized use are shown on these maps.

b. Roads and trails must only be used when designated as open by a BLM sign or map. You must only access such roads and trails by an allowable method of travel as indicated by a BLM sign or map. Rule 7(b) does not apply to holders of BLM-issued rights-of-way for maintenance or administrative purposes.

c. From December 1 through April 30, the Stinking Springs Trail and parts of the upper bench adjacent to the Wolf Flats Recreation Area are closed to human and vehicle entry to protect wintering big game. The authorized officer has the authority to adjust the closure due to weather or changes in the mule deer population. BLM closure maps are available at the BLM Upper Snake Field Office. Outside of the closure period, the motorized portion of trail is open to all modes of travel, except snow vehicles and vehicles more than 50 inches wide. The legal description for the closure is:

Boise Meridian, Idaho

T. 4 N., R. 41 E.,
Sec. 32, lands east of Kelly Canyon Road in the NE¼, lands east of Kelly Canyon Road in the SE¼NW¼, lands east of Kelly Canyon in the NE¼SW¼, SE¼;
Sec. 33, a portion of the W½NE¼, a portion of the SW¼SW¼SE¼NE¼, a portion of the NE¼NW¼, a portion of the NW¼NW¼, S½NW¼, SW¼, a portion of the NE¼SE¼, W½SE¼, SE¼SE¼.
T. 3 N., R. 41 E.,
Sec. 2, SW¼;
Sec. 3, a portion of the NE¼NE¼, W½NE¼, SE¼NE¼, W½, SE¼;
Sec. 4, N½SW¼, SE¼SW¼, SE¼;
Sec. 5, NW¼NE¼;
Sec. 8, a portion of lots 6 and 8;
Sec. 9, a portion of lots 2 through 4, N½, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 10, a portion of lots 1 and 2, N½NE¼, SW¼NE¼, NW¼, N½SW¼, SW¼SW¼, a portion of the SE¼SW¼;
Sec. 11, a portion of lots 2 through 4, N½NW¼, N½SE¼SE¼;
Sec. 15, a portion of lots 7 and 8, a portion of the NW¼NW¼
Sec. 16, a portion of lots 5 and 6.

The area described contains 3,251 acres, according to the official plat of the survey of the said land on file in the BLM Upper Snake Field Office, 1405 Hollipark Dr., Idaho Falls, ID 83401.

These supplementary rules supersede the Notice of Emergency Closure of Public Lands, Idaho that the BLM published in the **Federal Register** on March 16, 1988 (53 FR 8701).

8. Vehicle Size and Trail Width

a. You must not operate a motorized or mechanized vehicle in violation of trail width and/or vehicle type restrictions as indicated by a BLM sign or map.

b. You must not operate any vehicle more than 50 inches wide on any designated OHV routes.

c. You must not operate any vehicle more than 36 inches wide on any designated single track routes.

9. Boat Launch

You may only launch a boat in designated boat launches that are identified by a BLM sign or map.

10. Parking Restrictions and Regulatory Signs

You must comply with parking restrictions and regulatory requirements at all locations within the Snake River planning area.

11. Kelly Island Campground

You must comply with the following regulations at Kelly Island Campground:

a. Only two vehicles are permitted in a single campsite, only one of which may be a recreational vehicle (RV), camper, or vehicle with a camp trailer. No more than eight people are allowed per site.

b. Double campsites 1, 3, and 6 can accommodate no more than four vehicles, only two of which may be an RV, camper, or vehicle with a camp trailer. No more than 16 people are allowed per double campsite. For all double campsites, the standard campsite fee must be doubled.

c. All camping is subject to a 5-day stay limit.

d. The campsite may only be occupied nightly by registered parties.

e. Horses must be kept outside the recreation site and campground. All pets must be on a leash not longer than 6 feet and secured to a fixed object or under the control of a person, or otherwise physically restricted at all times.

f. You must keep and leave your camp clean. Do not throw trash into the river, fire rings, or vault toilets.

g. Fires must be fully contained in a metal fire grate, fire pan, or other metal device to contain ashes.

h. Do not damage buildings, signs, trees, vegetation or other facilities.

i. Visitors must obey quiet hours from 10 p.m. until 7 a.m. Do not use generators, radios, or other noisy devices during quiet hours.

j. Overnight visitors must return to the campground by 10 p.m. The entrance gate will be locked from 10 p.m. until 7 a.m. to prevent non-campers from entering.

k. You must not enter Kelly Island Campground via an OHV. Do not remove OHVs from trailers at Kelly Island Campground.

12. Other Use Authorizations

You must not violate any terms, conditions or stipulations of any permit or other authorization issued for special use of these public lands.

Exceptions

The prohibition on the use of firearms in Rule 1(a) does not prohibit hunting by licensed hunters in legitimate pursuit of wild game during the proper season with appropriate firearms, as permitted by the Idaho Department of Fish and Game, within all developed recreation site boundaries after October 1.

Hunting is prohibited within the Kelly Island Campground boundaries until the campground is closed for the season (closure timeframe varies), after which hunting by licensed hunters in legitimate pursuit of wild game is permitted within the boundaries. The gate must be closed and locked for the season before hunting (by foot) is permitted within the Kelly Island Campground boundaries. Campground closure will be advertised at the Eastern Idaho Visitor Center, the BLM Upper Snake Field Office, and at the following BLM recreation Web site: *http://www.blm.gov/id/st/en/fo/upper_snake/*

recreation_sites_/Kelly_Island_Campground.html.

Penalties: Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, any person who violates any of these supplementary rules may be tried before a United States Magistrate and fined up to $1,000 and/or imprisoned for no more than 12 months. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Steven A. Ellis,

BLM Idaho State Director.

[FR Doc. 2011–14198 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD070000.L91310000.EI0000; CACA 51880]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Land and Minerals Management proposes to withdraw approximately 22,562 acres of public lands from settlement, sale, location, and entry under the public land laws, including the United States mining laws, and the operation of the mineral leasing laws, and approximately 1,782 acres of Federal mineral estate from location and entry under the United States mining laws, including the operation of the mineral leasing laws, for a period of 20 years, on behalf of the Bureau of Land Management (BLM), to protect and preserve geothermal, solar, and wind energy study areas for future renewable energy development. This notice temporarily segregates the public lands and subsurface mineral estates for up to 2 years while various studies and analyses are made to support a final decision on the withdrawal application. The lands will remain open to the geothermal leasing laws and the Materials Act of 1947.

DATES: Comments must be received on or before September 6, 2011.

ADDRESSES: Comments should be sent to Karla Norris, Associate Deputy State Director (CA–930), California State Office, Bureau of Land Management, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825–1886.

FOR FURTHER INFORMATION CONTACT: Daniel Krekelberg, California State Office (CA–930), Bureau of Land Management, at 916–978–4655.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Land and Minerals Management proposes to withdraw, for a period of 20 years and subject to valid existing rights, the following described public lands and Federal mineral estates to protect the lands while the BLM evaluates the area for renewable energy development, including geothermal leasing and solar and wind energy rights-of-ways:

San Bernardino Meridian

a). Public Lands

T. 9 S., R. 12 E.,
sec. 2, E½ SE¼SW¼, S½SE¼, and S½NE¼SE¼;
sec. 4, lots 1 and 2, and S½;
sec. 6, lots 1 and 2, and SE¼;
sec. 8, E½;
sec. 10;
sec. 12, W½NE¼, SE¼NE¼, W½, N½SE¼, and SE¼SE¼;
sec. 14, W½NE¼ and NW¼;
sec. 18, lots 1 and 2, and E½;
secs. 20 and 24;
sec. 26, S½NW¼ and S½.
T. 9 S., R. 13 E.,
sec. 18, lots 3 to 6, inclusive, E½W½, and SE¼;
sec. 20, SW¼NE¼, W½NW¼, SE¼NW¼, and S½;
sec. 22, S½SW¼;
sec. 26, SW¼NW¼, SW¼, and S½SE¼;
sec. 28;
sec. 30, E½SW¼ and S½SE¼;
secs. 32 and 34.
T. 10 S., R. 13 E.,
sec. 4, lots 6, 7, and 14, and SW¼;
sec. 6, lots 2 to 15, inclusive, E½SW¼, and SE¼.
T. 10 S., R. 14 E.,
sec. 6, lots 6, 7, and lots 13 to 16, inclusive, E½SW¼, W½SE¼, and SE¼SE¼;
sec. 8, SW¼NE¼, W½, and SE¼;
sec. 22, SW¼NE¼, W½, and SE¼;
sec. 26, E½, N½NW¼, N½SE¼NW¼, S½N½SW¼, and S½SW¼;
sec. 28, NE¼SE¼.
T. 11 S., R. 14 E.,
sec. 12, NE¼NE¼.
T. 10 S., R. 15 E.,
sec. 32.
T. 11 S., R. 15 E.,
sec. 4, lots 3 to 6, inclusive, S½N½, and S½;
sec. 6, lots 3 to 9, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
secs. 8, 10, 11, 13, and 14;
sec. 18, E½E½;
sec. 20, N½, N½SE¼, and SE¼SE¼;
secs. 22 and 24;
sec. 28, N½, N½SE¼, and SE¼SE¼;
sec. 34, NE¼SW¼.
T. 11 S., R. 16 E.,
sec. 19, lots 3 to 18, inclusive;
sec. 29;
sec. 30, lots 3 to 18, inclusive, and E½.

The areas described aggregate 22,562 acres, more or less, in Imperial County.

(b). Non-Federal Surface and Federal Mineral Estate

(1). Non-Federal Surface and Federal Minerals

T. 9 S., R. 12 E.,
sec. 2, lots 3 to 18, inclusive, S½N½, N½SW¼, SW¼SW¼, W½SE¼SW¼, N½N½SE¼, and S½NW¼SE¼;
sec. 12, SW¼SE¼;
sec. 28, E½, SE¼NW¼, and SW¼.
T. 10 S., R. 14 E.,
sec. 26, SW¼NW¼, S½SE¼NW¼, and N½N½SW¼.

The areas described aggregate 1,182 acres, more or less, in Imperial County.

(2). Non-Federal Surface and Federal Oil and Gas, only

T. 9 S., R. 12 E.,
sec. 8, SW¼.
T. 10 S., R. 13 E.,
sec. 2, lots 7, 8, 13, and 14;
sec. 12, SW¼;NW¼;.
T. 10 S., R. 14 E.,
sec. 34, SE¼;NE¼;.
T. 11 S., R. 15 E.,
sec. 34, W½SW¼ and SE¼SW¼.

The areas described aggregate 520 acres, more or less, in Imperial County.

(3). Non-Federal Surface and Federal Geothermal, Only

T. 10 S., R.13. E,
sec. 10, E½NE¼.

The areas described aggregate 80.00 acres in Imperial County.

The total areas described in (a) and (b) above, including both public lands and Federal minerals, aggregate 24,344 acres, more or less, in Imperial County.

The BLM's petition for withdrawal has been approved by the Assistant Secretary for Land and Minerals Management. Therefore, it constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed withdrawal is to protect and preserve geothermal, solar, and wind energy study areas for future renewable energy development for a 20-year period.

The use of a right-of-way, interagency agreement, cooperative agreement, or surface management under 43 CFR part 3809 regulations would not adequately constrain non-discretionary uses that

could irrevocably affect the use of the lands for the development of renewable energy resources.

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

Until September 6, 2011, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to the BLM Director, California State Office, BLM, 2800 Cottage Way, Sacramento, California 95825.

Comments, including names and street addresses for respondents, will be available for public review at the BLM's California State Office, during regular business hours, 8:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. Before including your address, telephone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be 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.

Notice is hereby given that a public meeting will be afforded in connection with the proposed withdrawal. A notice of time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

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

For a period of 2 years from June 8, 2011, the public lands referenced in this notice will be segregated from settlement, sale, location, and entry under the public land laws, including the United States mining laws and the operation of the mineral leasing laws, but not the geothermal leasing laws or the Materials Act of 1947, and the Federal mineral estates will be segregated from the United States mining laws and the operation of the mineral leasing laws, but not the geothermal leasing laws or the Materials Act of 1947, unless the application is denied or canceled or the withdrawal is approved prior to that date.

Additionally, upon publication of this notice in the **Federal Register** and during the temporary 2 year segregative period, the BLM is no longer accepting any new applications for a right-of-way for a solar or wind energy facility, located on the lands described above. Any previously authorized grant or pending applications for geothermal leasing or a right-of-way for a solar or wind energy facility, located on the lands described in this notice, will not be affected by this notice.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of the authorized officer of BLM during the segregative period.

Authority: 43 CFR 2310.1–2.

Karla D. Norris,

Associate Deputy State Director, Natural Resources (CA–930).

[FR Doc. 2011–14168 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO923000–L14300000–ET0000; COC–0124534]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Proposed Withdrawal Extension

SUMMARY: The U. S. Army Corps of Engineers filed an application with the Bureau of Land Management (BLM) proposing to extend the Fort Carson-Piñon Canyon Military Lands Withdrawal created by Subtitle A of Public Law 104–201 of September 23, 1996 (110 Stat 2807), for an additional 15 years. A withdrawal extension would continue to protect the following lands and minerals and reserve them for use by the Secretary of the Army Fort Carson Military Reservation which includes 3,133 acres of public lands and 11,415 acres of federally owned minerals; and Piñon Canyon Maneuver Site which includes 2,517 acres of public lands and approximately 130,139 acres of federally owned minerals. The withdrawal extension would protect the surface and mineral estates from all forms of appropriation under the public land laws including mining and mineral laws, geothermal leasing laws and mineral materials disposal laws. The withdrawal created by Public Law 104–201 will expire on September 22, 2011, unless extended. This notice gives the public an opportunity to comment on the proposed action to extend the withdrawal and gives notice of the opportunity for a public meeting.

DATES: Comments must be received by September 6, 2011.

ADDRESSES: Comments should be sent to the Colorado State Office, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Chief, Branch of Lands and Realty, BLM Colorado State Office, (303) 239–3882; *jbeck@blm.gov.*

SUPPLEMENTARY INFORMATION: The public domain lands and minerals are in El Paso, Pueblo, Fremont and Las Animas Counties, Colorado, and are described as follows:

Sixth Principal Meridian, Colorado

T. 15 S., R. 66 W.,
Sec. 22, NW¼NE¼.
T. 17 S., R. 66 W.,
Sec. 5, lot 1;
Sec. 18, lot 3.
T. 18 S., R. 66 W.,
Sec. 9, SE¼NE¼, SW¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 14, NE¼NE¼;
Sec. 20, S½N½.
T. 16 S., R. 67 W.,
Sec. 11, E½SE¼;
Sec. 14, E¼NE¼NW¼;
Sec. 26, NW¼NW¼.
T. 17 S. R. 67 W.,
Sec. 35, NW¼.
T. 18 S., R. 67 W.,
Sec. 12, SE¼SW¼;
Sec. 17, NW¼;
Sec. 19, lots 3 and 4, SE¼NW¼, and NE¼SW¼;
Sec. 23, NW¼NW¼;
Sec. 28, SE¼NW¼ and NE¼SW¼;
Sec. 29, SW¼;
Sec. 30, lots 1, 3, and 4, E½; and E½SW¼;
Sec. 31, lots 1 to 4, inclusive, E½W½ and W½E½.
T. 18 S., R. 68 W.,
Sec. 13, W½SW¼ and NE¼SE¼;
Sec. 24, NW¼NE¼, NW¼, W½SW¼, and SE¼SE¼;
Sec. 25, N½N½ and E½SE¼.

Federal Minerals only in Fort Carson Base

T. 17 S., R. 66 W.,
Sec. 31, E½NE¼;
Sec. 32, NW¼;
Sec. 33, W½NW¼;

Sec. 34, SW¼NE¼ and SW¼SW¼.
T. 18 S., R. 66 W.,
Sec. 2, SE¼;
Sec. 6, lot 5;
Sec. 11, NE¼;
Sec. 19, S½SE¼;
Sec. 20, SW¼SW¼;
Sec. 22, S½SE¼;
Sec. 23, E½SE¼;
Sec. 27, N½NE¼, SW¼NW¼, and SW¼;
Sec. 29, NW¼NW¼, SE¼NW¼, SW¼, and W½SE¼;
Sec. 30, lot 4, SE¼NW¼, E½SW¼, and SE¼SE¼;
Sec. 31, lots 1 and 2, NE¼NE¼, S½NE¼, and SE¼NE¼;
Sec. 32, N½N½, SE¼NE¼, and E½SE¼;
Sec. 34, E½W½ and NE¼SE¼;
Sec. 35, NW¼, SE¼, N½SW¼, and SW¼SW¼.
T. 19 S., R. 66 W.,
Sec. 5, lot 3 and SE¼NW¼.
T. 17 S., R. 67 W.,
Sec. 14, W½NW¼ and S½;
Sec. 15, E½ and SW¼;
Sec. 17, N½SE¼.
T. 18 S., R. 67 W.,
Sec. 2, lots 1 and 2, SE¼NE¼, NE¼SE¼, and SW¼;
Sec. 7, lots 3 and 4, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 8, NW¼SW¼ and SE¼SW¼;
Sec. 10, S½NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 11, E½ and NW¼;
Sec. 12, NE¼NE¼, W½NE¼, NW¼, N½SW¼, SW¼SW¼, and W½SE¼;
Sec. 13, W½W½;
Sec. 14, E½;
Sec. 15, W½ and SE¼;
Sec. 19, S½NE¼ and SE¼;
Sec. 20, W½W½ and NE¼NW¼;
Sec. 22;
Sec. 23, NE¼, E½NW¼, SW¼NW¼, NW¼SW¼, E½SW¼, and N½SE¼;
Sec. 24, W½ and W½E½;
Sec. 25, W½NE¼, E½NW¼, and SE¼NW¼SE¼;
Sec. 26, E½NW¼, SW¼NW¼, and W½SW¼;
Sec. 25, W½NE¼, E½NW¼, and SE¼NW¼SE¼;
Sec. 26, E½NW¼, SW¼NW¼, and W½SW¼;
Sec. 27;
Sec. 29, NW¼NE¼ and NW¼;
Sec. 31, E½E½;
Sec. 32, W½W½;
Sec. 34, NE¼;
Sec. 35, SW¼ and SW¼SE¼.
T. 18 S. R. 68 W.,
Sec. 11, SE¼SE¼SE¼ lying Easterly of the Easterly right-of-way line of State Highway 115;
Sec. 12, E½SE¼, NW¼SE¼, NE¼SW¼ and W½SW¼ lying Easterly of the Easterly right-of-way line of State Highway 115;
Sec. 13, W½NW¼;
Sec. 14, NE¼NE¼ lying Easterly of the Easterly right-of-way line of State Highway 115.

Surface and Minerals in the Piñon Canyon Maneuver Area

T. 30 S., R. 59 W.,
Sec. 6, lot 4;
Sec. 31, lot 2.
T. 30 S., R. 60 W.,
Sec. 8, N½;
Sec. 10, N½;
Sec. 12, S½;
Sec. 13, N½;
Sec. 21, N½N½;
Sec. 22, NW¼;
Sec. 25, NE¼NE¼, S½NE¼; SE¼SW¼, and SE¼;
Sec. 26, N½NW¼;
Sec. 29, N½NE¼;
Sec. 33, S½NE¼, S½SW¼, and SE¼;
Sec. 35, SE¼SE¼.

Federal Minerals Only in Piñon Canyon Maneuver Area

References to the rim of Purgatoire River Canyon mean the boundary of the Piñon Canyon Site as defined by metes and bounds along the northwesterly or left rim of the canyon, facing downstream:

Sixth Principal Meridian, Colorado

T. 28 S, R. 55 W.,
Sec. 4, those portions of lots 2, 3, and 4, and SW¼NW¼ northwesterly of the rim;
Sec. 5, lots 1 to 4, inclusive, S½N½, NE¼SW¼, and NW¼SE¼;
Sec. 6, lots 1 to 7, inclusive, SE¼NE¼, SW¼NW¼, and NW¼SW¼;
Sec. 7, lots 1 and 2;
Sec. 18, lot 4, those portions westerly of the rim; (oil & gas).
T. 28 S., R. 56 W.,
Sec. 1, lot 1, SE¼NE¼, NW¼SW¼, E½SW¼, and SE¼;
Sec. 2, lot 1;
Sec. 3, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 5, lots 1 to 4, inclusive, S½SW¼ and SW¼SE¼;
Sec. 6, lots 1 to 5, inclusive, S½NE¼, SE¼NW¼, and SE¼;
Sec. 7, NE¼, NE¼NW¼, and NE¼SE¼;
Sec. 8, W½NE¼, W½, and NW¼SE¼;
Sec. 9;
Sec. 10, N½;
Sec. 11, W½NE¼, NW¼, and N½SW¼;
Sec. 12, NE¼ and E½NW¼;
Sec. 13, NE¼NW¼;
Sec. 14, those portions of the SE¼SE¼ northwesterly of the rim, and S½N½, SW¼, and W½SE¼;
Sec. 21, NE¼NE¼, W½, and W½SE¼;
Sec. 22, E½NE¼ and SE¼NW¼;
Sec. 22, SW¼NE¼ and N½SE¼; (oil & gas)
Sec. 23, those portions of the NE¼ and SW¼SE¼ westerly and northwesterly of the rim, and W½;
Sec. 26, NW¼NW¼;
Sec. 27, E½NE¼, SW¼NE¼, E½SW¼, and NW¼SE¼;
Sec. 28, W½W½;
Sec. 29, N½, N½SW¼, and SE¼;
Sec. 31, lot 4;
Sec. 32, E½ and S½SW¼;
Sec. 33, S½NW¼.
T. 29 S., R. 56 W.,
Sec. 4, those portions of lots 3, 4, and S½NW¼ northerly of the rim;
Sec. 5, that portion of lot 3 westerly of the rim, and lot 4;
Sec. 5, SE¼NW¼ and that portion of the S½SW¼ westerly of the rim; (oil & gas)
Sec. 6, lots 1 to 7, inclusive, SE¼NW¼, E½SW¼, and S½SE¼;
Sec. 6, S½NE¼ and N½SE¼; (oil and gas)
Sec. 7, those portions of the S½NE¼, NW¼SE¼, and SE¼SW¼ westerly of the rim, and lots 1 to 4, inclusive, NW¼NE¼, E½NW¼, and NE¼NE¼SW¼;
Sec. 7, NE¼NE¼; (oil and gas)
Sec. 8, that portion of the NW¼NW¼ lying westerly of the rim; (oil & gas)
Sec. 19, that portion of lot 1 westerly of the rim.
T. 28 S, R. 57 W.,
Sec. 1, lots 1 to 4, inclusive;
Sec. 2, lots 1 to 4, inclusive, S½NE¼, N½SW¼, and SE¼;
Sec. 3, lots 2, 3, and 4, SW¼NE¼, S½NW¼, SW¼, and N½SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, SE¼SW¼, and SE¼;
Sec. 5, lots 1 and 2, S½NE¼, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 7, lots 1 to 4, inclusive, SE¼NE¼, E½SW¼, and SE¼;
Sec. 8, N½ and W½SW¼;
Sec. 9, NE¼NW¼ and NE¼SE¼;
Sec. 10, NW¼NE¼, NE¼NW¼, and SW¼SW¼;
Sec. 11, NE¼ and N½SE¼;
Sec. 12, SW¼NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 13, N½;
Sec. 14;
Sec. 15, E½, S½NW¼, and SW¼;
Sec. 18, lots 1, 2, and 3;
Sec. 22, NE¼, SW¼SW¼, and E½SE¼;
Sec. 23;
Sec. 24, NW¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 25, W½;
Sec. 26, E½;
Sec. 27, N½, W½SW¼, and E½SE¼;
Sec. 28, NE¼NE¼, W½E½, and W½;
Sec. 29;
Sec. 30, lots 3 and 4, E½, and E½W½;
Sec. 31, lots 1 and 2, E½, and E½W½;
Sec. 32, N½, NE¼SW¼, and N½SE¼;
Sec. 33, N½N½, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 34, NE¼, N½NW¼, SW¼NW¼, and N½SE¼.

T. 29 S., R. 57 W.,
Sec. 2, SW¼SE¼;
Sec. 3, lots 3 and 4, S½NW¼, S½SW¼, and NE¼SW¼;
Sec. 6, lot 1, SE¼NE¼, and NW¼SE¼;
Sec. 7, lot 4, N½NE¼, SW¼NW¼, SE¼SW¼, and S½SE¼;
Sec. 8, S½NE¼ and NE¼SE¼;
Sec. 9, E½NE¼, SW¼NE¼, S½NW¼, N½SW¼, and SE¼;
Sec. 10, W½NW¼ and SW¼SW¼;
Sec. 11, NE¼, N½NW¼, and N½SE¼;
Sec. 12, N½NW¼, SW¼NW¼, SW¼, and SW¼SE¼;
Sec. 13, N½ and N½SW¼;
Sec. 14, E½, N½NW¼, and SW¼;
Sec. 15, SW¼NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
Sec. 17, E½NE¼ and SW¼NW¼;
Sec. 18, lots 1 to 4, inclusive, and SE¼;
Sec. 19, lots 1, 2, and 3, E½, SE¼NW¼, and NE¼SW¼;
Sec. 20, S½;
Sec. 21;
Sec. 22, SW¼NE¼, W½NW¼, SE¼NW¼, N½SW¼, and SE¼;
Sec. 23, NW¼NE¼, N½NW¼, and S½;
Sec. 24, those portions of the S½S½ northerly and northwesterly of the rim, N½NE¼, S½N½, and N½S½;
Sec. 25, that portion of NW¼NE¼ and N½NW¼ northwesterly of the rim;
Sec. 26, those portions of SE¼NE¼, S½SW¼, and SE¼, westerly and northwesterly of the rim, and N½NE¼, SW¼NE¼, NW¼, and N½SW¼;
Sec. 27, E½, NE¼NW¼, S½NW¼, and SW¼;
Sec. 28, NW¼NE/¼, S½NE¼, W½, and SE¼;
Sec. 29;
Sec. 30, lots 3 and 4, N½NE¼, E½SW¼, NE¼SE¼, and S½SE¼;
Sec. 31, lots 1 to 4, inclusive, E½ and E½W½;
Secs. 32 and 33;
Sec. 34, N½, SW¼, W½SE¼, and SE¼SE¼;
Sec. 35, those portions of W½NW¼ and SW¼SW¼ westerly and northwesterly of the rim.

T. 30 S., R. 57 W.,
Sec. 3, lots 3 and 4, SW¼NW¼, NW¼SW¼, and that portion of the SW¼SW¼ northwesterly of the rim;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 8, N½NE¼, W½SE¼, and SE¼SE¼;
Sec. 9, those portions of S½SW¼ northerly of the rim, and NE¼SW¼;
Sec. 17, those portions of E½E½, N½SW¼, and NW¼SE¼ westerly and northerly of the rim, and W½NE¼ and NW¼;
Sec. 18, lot 1, N½NE¼, and NE¼NW¼;
Sec. 19, lots 2 and 3, those portions of the S½NE¼, SE¼NW¼, NE¼SW¼ westerly and northwesterly of the rim;
Sec. 30, lot 1, those portions of lot 2 and NE¼NW¼ westerly of the rim.

T. 28 S., R. 58 W.,
Sec. 11, NE¼, SW¼, and W½SE¼;
Sec. 12, N½ and E½SE¼;
Sec. 13, N½, SW¼, and N½SE¼;
Sec. 14, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 19, lots 1 to 4, inclusive, N½NE¼, E½W½, and SE¼;
Sec. 20;
Sec. 21, S½;
Sec. 22, N½, SW¼, W½SE¼, and SE¼SE¼;
Sec. 23, SE¼SE¼;
Sec. 24, S½SW¼ and SW¼SE¼;
Sec. 25, NW¼NE¼, S½NE¼, W½, and SE¼;
Sec. 26, NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 27 and 28;
Sec. 29, N½;
Sec. 30, lots 1, 2, and 4, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, E½;
Sec. 33, W½;
Sec. 34;
Sec. 35, N½N½, SE¼NE¼, SW¼NW¼, SW¼SW¼, and SE¼SE¼.

T. 29 S., R. 58 W.,
Sec. 1, lots 2, 3, and 4, SE¼NE¼, S½NW¼, and SW¼SE¼;
Sec. 2, lots 1 to 4, inclusive, and S½N½;
Sec. 3, lots 1 to 4, inclusive, and S½N½;
Sec. 4, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 5, lots 1 to 4 inclusive, S½N½, and S½;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, NW¼SE¼ and E½E½;
Sec. 8;
Sec. 9, N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 10, W½NW¼, SW¼, and S½SE¼;
Sec. 11, N½ and NE¼SE¼;
Sec. 12, NW¼NE¼ and NW¼NW¼;
Sec. 13, NE¼, NE¼SW¼, SW¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 14, E½, E½W½, NW¼NW¼, and SW¼SW¼;
Sec. 15, N½NE¼, NW¼, and S½S½;
Sec. 17, W½NE¼, NW¼, and S½S½;
Sec. 18, lots 2, 3, and 4, NE¼NE¼, W½E½, E½W½, and SE¼SE¼;
Sec. 19, lots 1 to 4, inclusive, N½NE¼, E½NW¼, SE¼SW¼, and S½SE¼;
Sec. 20, E½, N½NW¼, SE¼NW¼, and S½SW¼;
Sec. 21, N½NE¼, SW¼NE¼, NW¼, and NW¼SW¼;
Sec. 22, N½ and N½S½;
Sec. 23, N½NE¼, NW¼, and SE¼SE¼;
Sec. 24, E½E½; and W½NW¼;
Sec. 25, S½NE¼, N½NW¼, S½SW¼, and SE¼;
Sec. 26, N½NE¼; NW¼NW¼, and N½S½;
Sec. 27;
Sec. 28, S½NW¼; and S½;
Sec. 29;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 31, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32, S½;
Sec. 33;
Sec. 34, E½;
Sec. 35, SW¼.

T. 30 S., R. 58 W.,
Sec. 2, lots 3 and 4, S½NW¼, and S½;
Sec. 3, lots 1 and 4, SE¼NE¼, SW¼NW¼, W½SW¼, and E½SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 3 and 4, S½NW¼, and SW¼;
Sec. 6, lots 3 to 7, inclusive, SE¼NW¼, and E½SW¼;
Sec. 7, lots 1, 2, and 3, E½, and E½W½;
Sec. 8, W½, W½SE¼, and SE¼SE¼;
Sec. 9, E½ and NW¼;
Sec. 10, W½;
secs. 11, 12, 13, and 14;
Sec. 15, NW¼;
Sec. 17;
Sec. 18, lot 4, E½NE¼, SE¼SW¼, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 21, NW¼NE¼, SE¼NE¼, N½NW¼; SW¼NW¼, and NW¼SW¼;
Sec. 21, SW¼NE¼; (oil and gas)
Sec. 22, W½SW¼ and NW¼SE¼;
Sec. 23, N½NE¼, NW¼SW¼, and SE¼SW¼;
Sec. 24, NE¼ and N½SE¼;
Sec. 25, those portions of SE¼NE¼ and W½SE¼ westerly of the rim, and NE¼NE¼, SW¼NE¼, W½NW¼, SE¼NW¼, and SW¼;
Sec. 26, NE¼NE¼, NW¼NW¼, S½N½, and S½;
Sec. 27, W½E½ and W½;
Sec. 28, NE¼NE¼, S½N½, and S½;
Sec. 29, NW¼NE¼, NW¼, W½SW¼, and SE¼SW¼;
Sec. 30, lots 1 and 2, NE¼, and E½NW¼;

Sec. 32, N½;
Sec. 33 E½;
Sec. 34, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
Sec. 35, those portions of N½, SW¼, and W½SE¼ northerly and westerly of the rim.
T. 31 S., R. 58 W.,
Sec. 2, those portions of the SW¼NE¼, and W½SE¼ westerly of the rim, and SE¼NW¼, and SW¼;
Sec. 3, lot 4, SW¼NE¼, SW¼NW¼, NW¼SW¼, and E½SW¼;
Sec. 4, E½SW¼ and SE¼;
Sec. 5, lots 1 and 2, S½NE¼, SE¼SW¼, and SE¼;
Sec. 6, lots 1 to 6, inclusive, S½NE¼, and SE¼;
Sec. 7, NE¼, N½SE¼, and SW¼SE¼;
Sec. 7, lots 1, 2, and 3; (oil & gas)
Sec. 8, N½, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 9, N½NE¼, SE¼NE¼, and NE¼NW¼;
Sec. 9, SE¼NW¼, and SW¼SE¼ northwesterly of the rim; (oil & gas)
Sec. 10, those portions of S½NE¼ and N½SE¼ northerly and westerly of the rim, and NE¼NE¼;
Sec. 11, those portions of NW¼NE¼, NE¼NW¼ northerly of the rim, and NW¼NW¼.
T. 28 S., R. 59 W.,
Sec. 24, E½, E½NW¼, and SW¼;
Sec. 25.
T. 29 S., R. 59 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 1, 2 and 3, S½NE¼, S½NW¼, SW¼, and NW¼SE¼;
Sec. 7, lots 3, 4, E½SW¼, and SE¼;
Sec. 9;
Sec. 10, NE¼, N½NW¼, and N½SE¼;
Sec. 11;
Sec. 12, W½NE¼, NW¼, W½SW¼, and NW¼SE¼;
Sec. 13, S½;
Sec. 14, E½;
Sec. 15, W½;
Sec. 17, NW¼NE¼, S½NE¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 18, lots 1 to 4, inclusive, E½W½ and SE¼;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, SW¼NE¼, NW¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 21, NE¼NE¼, S½NE¼, and S½;
secs. 22, 23, and 24;
Sec. 25, N½N½ and S½;
secs. 26 and 27;
Sec. 28, N½N½ and S½ SW¼;
Sec. 29, NE¼NE¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 30, lots 1 and 2, W½NE¼, SE¼NE¼, E½NW¼, N½SE¼, and SE¼SE¼;
Sec. 30, NE¼SW¼ and SW¼SE¼; (oil & gas)
Sec. 31, E½NE¼;
Sec. 31, lots 2 and 3, W½NE¼, and SE¼; (oil & gas)
Sec. 32, N½;
Sec. 32, N½S½ and SW¼SW¼; (oil & gas)
Sec. 33, SE¼NE¼, N½NW¼, and SW¼NW¼;
Sec. 34, S½;
Sec. 35, NE¼ and NE¼SE¼.
T. 30 S. R. 59 W.,
Sec. 1, lots 1, 2, S½NE¼ and SE¼;
Sec. 2, W½SW¼ and SE¼SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, SW¼, N½SE¼, and SE¼SE¼;
Sec. 4, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 5, S½N½ and S½;
Sec. 6, lots 5, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½ and E½W½;
Sec. 8, W½;
Sec. 9, W½;
Sec. 10, NE¼;
Sec. 11;
Sec. 12, SE¼NE¼, SW¼NW¼, N½SW¼, and SW¼SW¼;
Sec. 13, NW¼SW¼ and S½S½;
Sec. 14;
Sec. 15, NE¼NW¼, W½SW¼, SE¼SW¼, and SE¼;
Sec. 18, lots 1 to 4, inclusive, E½ and E½W½;
Sec. 19, lots 1 and 2, E½ and E½NW¼;
Sec. 20, E½, S½NW¼, and SW¼;
Secs. 21, 23, 24, and 25;
Sec. 26, E½E½ and W½W½;
Secs. 27 and 28;
Sec. 29, N½N½ and SW¼NE¼;
Sec. 30, lots 3 and 4, E½SW¼, and W½SE¼;
Sec. 31, lots 1 and 3, NE¼NW¼, S½NE¼, SE¼NW¼, NE¼SW¼, and N½SE¼;
Sec. 32, SW¼NW¼, SW¼, and W½SE¼;
Sec. 34, S½;
Sec. 35, S½.
T. 31 S. R. 59 W.,
Sec. 1, lots 3 and 4, S½NW¼, and SW¼;
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 4, NE¼SW¼, S½S½, and NE¼SE¼;
Sec. 5, lots 2 and 3, SW¼, W½SE¼, and SE¼SE¼;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, and E½SW¼;
Sec. 7, those portions of lot 2, SW¼NE¼, SE¼NW¼ and W½SE¼ lying northerly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No. 54, and lot 1, N½NE¼, NE¼NW¼, and SE¼SE¼;
Sec. 8, those portions of S½SW¼, lying northerly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No. 54, and the E½NE¼, SW¼NE¼, N½S½ and S½SE¼;
Sec. 9;
Sec. 10, N½, SW¼, and S½SE¼;
Sec. 11, N½ and S½SW¼;
Sec. 12, E½ and N½NW¼;
Sec. 14, N½NW¼ and SW¼NW¼;
Sec. 15, N½N½ and SW¼NE¼;
Sec. 17, those portions of the NW¼NE¼ lying northeasterly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No.54.
T. 29 S., R. 60 W.,
Sec. 9, those portions of the SE¼NE¼ and NE¼SE¼ lying southeasterly of the southeasterly right-of-way line for U.S. Highway 350, and the SE¼SE¼;
Sec. 10, S½NE¼, SW¼NW¼, NW¼SW¼, and S½S½;
Sec. 11, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Secs. 12 to 15, inclusive;
Sec. 17, those portions of the S½SW¼ lying southeasterly of the southeasterly right-of-way line of U. S. Highway 350;
Sec. 21, E½;
Secs. 22, 23, and 24;
Sec. 25, N½, SW¼, and NW¼SE¼;
Sec. 26;
Sec. 33, SE¼;
Sec. 34;
Sec. 35, N½NE¼, SE¼NE¼, NW¼NW¼, and SW¼.
T. 30 S., R. 60 W.,
Sec. 1, S½;
Sec. 2, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 3, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 10, NW¼SW¼, S½S½, and NE¼SE¼;
Sec. 11;
Sec. 12, N½;
Sec. 13, S½;
Secs. 14 and 15;
Sec. 19, lot 1, N½NE¼, and NE¼NW¼;
Sec. 20, W½NE¼ and N½NW¼;
Sec. 21, S½NW¼ and SW¼;
Sec. 22, E½ and E½SW¼;

Sec. 23, W½NW¼, SW¼, and W½SE¼;
Sec. 24, N½ and N½SE¼;
Sec. 25, S½NW¼ and N½SW¼;
Sec. 26, NE¼, S½NW¼, and NE¼SE¼;
Sec. 27, N½NE¼, SE¼NE¼, NE¼NW¼, S½SW¼, and SW¼SE¼;
Sec. 28, N½NW¼ and S½S½;
Sec. 33, N½N½ and SW¼NW¼;
Sec. 34, N½NE¼, NW¼NW¼, S½S½, and NE¼SE¼;
Sec. 35, S½NE¼, W½, N½SE¼; and SW¼SE¼.

T. 31 S., R. 60 W.,
Sec. 1, those portions of the N½SW¼ and W½SE¼ lying northerly and northeasterly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No.54, and E½SE¼;
Sec. 1, lots 1 to 4, inclusive, and S½S½; (oil & gas)
Sec. 2, those portions of the S½NW¼, NE¼SW¼, and NE¼SE¼ lying northerly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No. 54;
Sec. 2, and lots 1 to 4, inclusive, S½NE¼; and those portions of the NW¼SE¼ lying northerly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No. 54; (oil and gas)
Sec. 3, lot 2, and those portions of the S½NE¼ lying northeasterly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No. 54, and lot 1; (oil and gas)
Sec. 12, Those portions of the NE¼NE¼ lying northeasterly of a line 10 feet northerly of and parallel to the centerline of Las Animas County Road No.54.

T. 29 S., R. 61 W.,
Sec. 25, metes and bounds parcel contiguous to U. S. Highway No 350 in the SE¼NE¼;
Sec. 25, N½N½ and E½SE¼.

The areas described, including both surface and mineral estates, aggregate approximately 147,204 acres in El Paso, Pueblo, Fremont and Las Animas Counties.

The proposed withdrawal extension would continue to protect the Fort Carson Military Reservation at Colorado Springs, and the associated Piñon Canyon Maneuver Area for military maneuvering, training and weapons firing and other defense-related purposes. The use of a right-of-way or a cooperative agreement would not provide adequate protection for the Federal investment in the areas and is not authorized for those purposes. There are no suitable alternative sites as the described lands and mineral interests contain the military values in need of protection. The Army would not need to acquire water rights to fulfill the purpose of the requested withdrawal extension.

The Army held public meetings in conjunction with the proposed withdrawal extension: November 1, 2006, at Mesa Right High School, 6070 Mesa Ridge Parkway, Colorado Springs, Colorado 80911; November 2, 2006, at Trinidad State Jr. College, Sullivan Student Center, 600 Prospect St., Trinidad, Colorado; and November 3, 2006, at Otero Jr. College, Student Center Banquet Room, 2001 San Juan Ave., La Junta, Colorado.

Notice is hereby given that one or more public meetings will be held in connection with the proposed withdrawal extension. A notice of the time and place of any public meetings will be published in the **Federal Register** and at least one local newspaper at least 30 days before the scheduled date of the meeting. Further documentation, map information, as well as public comments including names and street addresses of respondents, will be available for

public review at the BLM Colorado State Office at the address above during regular business hours, 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

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.

This application will be processed in accordance with the regulations set forth at 43 CFR part 2300.

Authority: 43 CFR 2310.3–1(b).

Helen M. Hankins,

State Director.

[FR Doc. 2011–14151 Filed 6–7–11; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZC01000.L1430000.ES0000; AZA 32905]

Notice of Realty Action; Recreation and Public Purposes Act Classification; and Notice of Intent To Prepare an Amendment to the Kingman Resource Management Plan; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined for classification approximately 1.31 acres of public land located in Mohave County, Arizona, and has found the surface of the land suitable for lease to the Pinion Pine Fire District under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended, to be used as a fire station. In order to implement the classification decision, the BLM intends to prepare an Environmental Assessment (EA) to analyze the proposed amendment to the BLM Kingman Resource Management Plan (RMP) by identifying the subject land as available for conveyance under the R&PP Act, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: Comments of interested persons are invited. Comments must be postmarked no later than June 29, 2011. Only written comments will be accepted. Please reference "Proposed Pinion Pine Fire District Station" on all correspondence. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local news media. In order to be included in the EA, all comments must be postmarked no later than July 25, 2011. The BLM will provide additional opportunities for public participation during the planning process.

ADDRESSES: You may submit comments on issues and planning criteria related to the Kingman RMP/EA by any of the following methods:

- *E-mail: andy_whitefield@blm.gov.*
- *Fax:* 928–718–3761.
- *Mail:* Ruben Sanchez, BLM Field Manager, Kingman Field Office, 2755 Mission Boulevard, Kingman, Arizona 86401.

Documents pertinent to this proposal may be examined at the BLM Kingman Field Office at the above address during regular business hours (8 a.m. to 4 p.m.),

Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Andy Whitefield, Environmental Protection Specialist, telephone 928–718–3746; address BLM Kingman Field Office, 2755 Mission Boulevard, Kingman, Arizona 86401; e-mail *andy_whitefield@blm.gov.*

SUPPLEMENTARY INFORMATION: In September 2004, the Pinion Pine Fire District (District) submitted an application for the conveyance of lands under the authority of the R&PP Act, as amended (43 U.S.C. 869 *et seq.*). A portion of the lands for which the application was made were under a lease with the former landowner which subsequently expired in December 2004. In its application, the District also applied for lands in addition to those under the lease so the District could continue to use and expand the fire station facilities. These lands were acquired in a land exchange. When acquired, these lands became "public lands," pursuant to Section 205(c) of the FLPMA, 43 U.S.C. 1715(c), and thus made subject to the BLM classification and planning requirements. The parcel of land for which application was made is described as follows:

Gila and Salt River Meridian

T. 20 N., R. 16 W.,
Sec. 1, lot 5.

The area described contains approximately 1.31 acres in Mohave County.

The surface of the above-described land in Mohave County, Arizona, has been examined and found suitable for classification for a non-profit, public purpose—specifically a site that may be leased and/or conveyed for use as a fire station, serving the immediate community, under the provisions of the R&PP Act, as amended, 43 U.S.C. 869 *et seq.,* and is hereby classified accordingly pursuant to the Taylor Grazing Act, as amended, 43 U.S.C. 315(f). The land is not needed for any Federal purpose, and its proposed disposal will be determined upon completion of the RMP amendment process, which includes addressing the public interest.

Effective upon publication of this notice in the **Federal Register**, the public land described above is segregated from all other forms of appropriation under the public land laws, except for leasing and/or conveyance under the R&PP Act. Segregation from the mining and mineral leasing laws does not apply, because the United States of America does not hold title to the mineral estate. The land is, however, segregated from the operation of the Materials Act, as amended, 30 U.S.C. 601 *et seq.,* to the extent of the BLM's authority to dispose of mineral materials that are considered a part of the surface estate.

The above-described land has not been classified until now. The land was acquired along with other lands pursuant to an exchange executed under the authority of Section 206 of the Federal Land Policy and Management Act (FLPMA), as amended, 43 U.S.C. 1716. When acquired, these lands became "public lands," pursuant to Section 205 (c) of FLPMA, 43 U.S.C. 1715 (c), and thus made subject to BLM classification and planning requirements.

The BLM Kingman RMP does not identify the above described parcel for uses under the R&PP Act or for disposal. Therefore, the BLM is proposing to amend the Kingman RMP, in accordance with 43 CFR 1610.5–5, to identify the above-described land as being subject to surface occupancy and use under the terms and conditions of a lease and/or conveyance pursuant to the R&PP Act. The amendment would fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), FLPMA, and BLM management policies.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis of both the proposed lease/conveyance under the R&PP Act, as well as any associated proposed plan amendment under FLPMA, including alternatives, and guide the process for developing the EA. At present, the BLM has identified the following preliminary issue:

- The denial of the District's application and removal of its fire station would significantly reduce the effectiveness of the District's ability to respond to emergencies within the area.

As noted above, authorization of this proposed lease and/or conveyance of public land would require amendment of the Kingman RMP, March 1995. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings that may result from preparation of an EA. The BLM will integrate the land use planning process with the NEPA process for this project.

The BLM will also utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

If and when the BLM State Director does or does not approve an amendment to the Kingman RMP, the public will be notified accordingly.

Any lease and/or conveyance of the subject public land will be made subject to the provisions of the R&PP Act and the applicable regulations of the Secretary of the Interior. Any lease and/or conveyance of this land will also contain the following reservations to the United States:

1. Provisions of the R&PP Act, including but not limited to, the terms required by 43 CFR 2741.9;

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

3. The United States would reserve to itself, its successors, assigns and permit holders the rights to maintain, operate, and terminate a road, as granted in right-of-way AZA 33596, and the rights to construct, operate, maintain, and terminate a fence as granted in right-of-way AZA 33619.

Any lease or conveyance will also be subject to valid existing rights, including outstanding mineral rights; will contain any terms or conditions required by law or regulation, including, but not limited to, any terms or conditions required by 43 CFR 2741.9; and will contain an appropriate indemnification clause protecting the United States from claims arising out of the lessee's or grantee's use, occupancy, or operations on the leased or patented lands. It will also contain any other terms or conditions deemed necessary or appropriate by the authorized officer.

RMP Amendment Comments: The public is invited to provide comments on the proposed Kingman RMP amendment, including planning criteria to consider regarding the proposed RMP amendment, concerns, issues, or proposed alternatives.

R&PP Classfication Comments: Interested parties may submit written comments involving the suitability of the land for the fire station. Comments on the classification should be limited to whether the land is physically suited

for the fire station, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, as well as State and Federal programs, and whether the use takes into consideration germane tribal plans and policies.

R&PP Application Comments: Interested parties may submit written comments regarding the specific use proposed in the R&PP application, proposed action and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the fire station. Copies of the application, proposed action, and plan of development are available from the BLM Kingman Field Office.

Any adverse comments concerning the classification decision stated in this Notice will be reviewed by the Field Manager, Kingman Field Office, who may sustain, vacate or modify that realty action. In the absence of any objection or adverse comment, the classification decision will become the final determination of the Department of the Interior. In such case, the classification will become effective on August 8, 2011.

In any event, the land will not be offered for an R&PP Act lease and/or conveyance until after the classification decision takes effect and at least 30 days have elapsed following public notice of the BLM State Director's approval of the BLM Kingman RMP amendment. Any comments received during the scoping period, or following publication of the draft RMP amendment and draft supporting NEPA analysis, and/or protests associated with the planning process will be subject to the applicable provisions of the BLM planning regulations at 43 CFR part 1610.

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.

(Authority: 43 CFR 1610.2, 43 CFR 1610.5–5, 43 CFR 2741.5(h)).

Ruben A. Sánchez,

Kingman Field Office Manager.

[FR Doc. 2011–14087 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO620000.L18200000.XH0000]

Notice of Reopening the Call for Nominations for Certain Resource Advisory Councils

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to request public nominations for certain Bureau of Land Management (BLM) Resource Advisory Councils (RAC) that have member terms expiring this year. The RACs provide advice and recommendations to the BLM on land use planning and management of the National System of Public Lands within their geographic areas.

DATES: All nominations must be received no later than July 8, 2011.

ADDRESSES: The address of BLM State Offices accepting nominations is listed in the "**SUPPLEMENTARY INFORMATION**" section of this notice.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, Bureau of Land Management, Correspondence, International, and Advisory Committee Office, 1849 C Street, NW, MS–MIB 5070, Washington, DC 20240; (202) 208–4294.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. The rules governing RACs are found at 43 CFR part 1784 and include the following three membership categories:

Category One—Holders of Federal grazing permits and representatives of organizations associated with energy and mineral development, timber industry, transportation or rights-of-way, developed outdoor recreation, off-highway vehicle use, and commercial recreation;

Category Two—Representatives of nationally or regionally recognized environmental organizations; archaeological and historic organizations, dispersed recreation activities, and wild horse and burro organizations; and

Category Three—Representatives of state, county, or local elected office; employees of a state agency responsible for management of natural resources; representatives of Indian tribes within or adjacent to the area for which the council is organized; representatives of academia who are employed in natural sciences; and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the state in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally-registered lobbyists to serve on all FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;
—A completed background information nomination form; and
—Any other information that addresses the nominee's qualifications.

Simultaneously with this notice, BLM state offices will issue press releases providing additional information for submitting nominations, with specifics about the number and categories of member positions available for each RAC in the state. Nominations for RACs should be sent to the appropriate BLM offices listed below:

Alaska

Alaska RAC

Danielle Allen, Alaska State Office, BLM, 222 West 7th Avenue, #13, Anchorage, Alaska 99513, (970) 271–3335;

California

Central California RAC

David Christy, Mother Lode Field Office, BLM, 5152 Hillsdale Circle, El Dorado Hills, California 95762, (916) 941–3146.

Northeastern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332.

Northwestern California RAC

Jeff Fontana, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, California 96130, (530) 252–5332.

Colorado

Front Range RAC

Cass Cairns, Royal Gorge Field Office, BLM, 3028 East Main Street, Cañon City, Colorado 81212, (719) 269–8553.

Northwest RAC

David Boyd, Silt Field Office, BLM, 2300 River Frontage Road, Silt, Colorado 81652, (970) 876–9008.

Idaho

Coeur d'Alene District RAC

Lisa Wagner, Coeur d'Alene District Office, BLM, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815, (208) 769–5014.

Twin Falls District RAC

Heather Tiel-Nelson, Twin Falls District Office, BLM, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

Montana and Dakotas

Dakotas RAC

Lonny Bagley, North Dakota Field Office, BLM, 99 23rd Avenue West, Suite A, Dickinson, North Dakota 58601, (701) 227–7703.

Nevada

Mojave-Southern Great Basin RAC; Northeastern Great Basin RAC; Sierra Front Northwestern Great Basin RAC

Rochelle Francisco, Nevada State Office, BLM, 1340 Financial Boulevard, Reno, Nevada 89502, (775) 861–6588.

Oregon/Washington

Eastern Washington RAC; John Day-Snake RAC; Southeast Oregon RAC

Pam Robbins, Oregon State Office, BLM, 333 SW First Avenue, P.O. Box 2965, Portland, Oregon 97204, (503) 808–6306.

Utah

Utah RAC

Sherry Foot, Utah State Office, BLM, 440 West 200 South, Suite 500, P.O. Box 45155, Salt Lake City, Utah 84101, (801) 539–4195.

Certification Statement: I hereby certify that the BLM Resource Advisory Councils are necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: June 1, 2011.

Mike Pool,

Deputy Director.

[FR Doc. 2011–14155 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0511–7499;] 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 14, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 23, 2011. 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.

J. Paul Loether,

Chief, National Register of Historic Places, National Historic Landmarks Program.

ALABAMA

Jefferson County

Southside Historic District (Boundary Increase), 2800 University Blvd., parts of 4th—7th Aves. S., 22nd—32nd Sts. S., Birmingham, 11000374

Madison County

Lowe Mill and Mill Village Historic District, Triana Blvd. SW., 10th Ave. SW., Summer St. & Governor's Dr., Huntsville, 11000375

CONNECTICUT

Fairfield County

Gallaher Estate, 300 Grumman Ave., Norwalk, 11000376

DISTRICT OF COLUMBIA

District of Columbia

Burrows, Hilleary T., House, (American University Park in Washington, DC: Its Early Houses, Pre-Civil War to 1911 MPS) 4520 River Rd., NW., Washington, 11000377

Burrows, Samuel and Harriet, House, (American University Park in Washington, DC: Its Early Houses, Pre-Civil War to 1911 MPS) 4624 Verplanck Pl., NW., Washington, 11000378

Chappell, N. Webster, House, (Tenleytown in Washington, DC: 1770–1941, MPS) 4131 Yuma St., NW., Washington, 11000379

Stone, Robert and Lillie May, House, (American University Park in Washington, DC: Its Early Houses, Pre-Civil War to 1911 MPS) 4901 47th St., NW., Washington, 11000380

Walde—Carter House, (American University Park in Washington, DC: Its Early Houses, Pre-Civil War to 1911 MPS) 4628 48th St., NW., Washington, 11000381

FLORIDA

Jefferson County

Girardeau House, 950 E. Washington St., Monticello, 11000382

INDIANA

Lake County

Maack, Albert, House, 498 Court St., Crown Point, 11000383

Marion County

Gramse, The, 2203 Broadway St., Indianapolis, 11000384

Indianapolis White Castle Number 3, 660 Fort Wayne Ave., Indianapolis, 11000385

Porter County

Bloch, Conrad and Catherine, House, 608 Academy St., Valparaiso, 11000386

Putnam County

Eastern Enlargement Historic District, Roughly bounded by E. Franklin, Wood, Anderson & College Sts., Greencastle, 11000387

Northwood Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS) Roughly bounded by Shadowlawn, N. Arlington, E. Franklin & Hillsdale Aves., Greencastle, 11000388

Old Greencastle Historic District, Roughly bounded by W. Liberty, Market, W. Poplar & W. Gillespie Sts., Greencastle, 11000389

Wabash County

East Wabash Historic District, Roughly bounded by Walnut, E. Market, N. Wabash & S. East Sts., Wabash, 11000390

IOWA

Harrison County

I.O.O.F. Hall, 613–615 Iowa Ave., Dunlap, 11000391

Pottawattamie County

Hughes—Irons Motor Company, 149–161 W. Broadway, Council Bluffs, 11000392

Warren County

Hoosier Row School, 15246 Cty. Rd. R63, Indianola, 11000393

KANSAS

Sedgwick County

Broom Corn Warehouse, 416 S. Commerce, Wichita, 11000394

Farmer, J.E., House, (African American Resources in Wichita, Kansas MPS) 1301 Cleveland, Wichita, 11000395
McClinton Market, (African American Resources in Wichita, Kansas MPS) 1205 E 12th., Wichita, 11000396

LOUISIANA

Calcasieu Parish

1937 Iowa High School, 215 S. Kinney Ave., Iowa, 11000397

East Baton Rouge Parish

Campbell Apartment Building, 528 E. State St., Baton Rouge, 11000398

MISSOURI

Jackson County

Town of Kansas Site, (Railroad Related Historic Commercial and Industrial Resources in Kansas City, Missouri MPS) Address Restricted, Kansas City, 11000399

Miller County

Union Electric Administration Building—Lakeside (Boundary Increase), 1 Willmore Ln., Lakeside, 11000400

NEW YORK

Herkimer County

Frankfort Hill District Number 10 School, 2235 Albany Rd., Frankfort Hill, 11000401

Lewis County

Stoddard—O'Connor House, 5431 Shady Ave., Lowville, 11000402
Wildwood Cemetery and Mary Lyon Fisher Memorial Chapel, River Rd., Lyons Falls, 11000403

OREGON

Jackson County

Hatch, Charles and Elizabeth, House, 199 1st St., Rogue River, 11000404

SOUTH CAROLINA

Hampton County

Hampton County Jail, 702 1st St., W., Hampton, 11000405

[FR Doc. 2011–14052 Filed 6–7–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Availability of the Final Environmental Impact Statement for the Madera Irrigation District Water Supply Enhancement Project located in Madera County, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation) has prepared a Final Environmental Impact Statement (EIS) for the Madera Irrigation District Water Supply Enhancement Project (MID WSEP). Reclamation proposes to approve the banking of up to 55,000 acre-feet per year of Central Valley Project (CVP) water outside the MID service area and the alteration of Reclamation-owned facilities. The total banking capacity of the MID WSEP is 250,000 acre-feet.

Portions of the 24.2 Canal, Section 8 Canal, Main Number 1 Canal, Cottonwood Creek, and Gravelly Ford Canal would be enlarged, extended, or improved. The MID WSEP would be completed in two phases. Phase 1 would involve recharge-related facilities only. Phase 2 would involve supplemental recharge facilities and facilities for recovery of banked water. The Final EIS addresses both phases.

DATES: Reclamation will not make a decision on the proposed action until at least 30 days after release of the Final EIS. After the 30-day waiting period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

ADDRESSES: A compact disc or a copy of the Final EIS may be requested from Mr. Chuck Siek, Bureau of Reclamation, 1243 'N' Street, Fresno, CA 93721–1831, 559–487–5138, TDD 800–735–2929 or via e-mail at *csiek@usbr.gov.* The Final EIS is also available on the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=3128.*

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Siek, Bureau of Reclamation, 559–487–5138, TDD 800–735–2929, or via e-mail at *csiek@usbr.gov.* See **SUPPLEMENTARY INFORMATION** section for locations where copies of the Final EIS are available.

SUPPLEMENTARY INFORMATION: The MID WSEP is located in Madera County, California. To increase water storage, enhance water supply reliability and flexibility for current and future water demand, and reduce local overdraft, MID proposes to implement the WSEP. MID would bank CVP water and other imported water in the aquifer underlying Madera Ranch. In wet years, water would be banked in the overdrafted aquifer for use in dry years. To help alleviate the overdraft condition, 10 percent of the water banked would remain in the aquifer.

A Notice of Availability announcing the release of the Draft EIS was published in the **Federal Register** on July 27, 2009 (74 FR 37051). The written comment period on the Draft EIS ended September 25, 2009. The Final EIS contains responses to all comments received and reflects comments and any additional information received during the review period.

The Draft EIS considered the direct, indirect, and cumulative effects on the physical, natural, and human environment that may result from the construction and operation of a water bank on Madera Ranch.

The Draft EIS addressed potentially significant environmental issues and recommends adequate and feasible mitigation measures to reduce or eliminate significant environmental impacts. The Draft EIS examined three banking alternatives as well as the no action alternative. A public meeting was held on August 27, 2009, in Madera, California.

The Final EIS includes a new alternative that was developed as a result of comments received on the Draft EIS. This alternative (Reduced Alternative B) represents a scaled-back version of Alternative B that uses fewer swales to minimize effects to vernal pools and limits the number of recharge basins to the number needed for the project to be practicable.

Copies of the Final EIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225.
- Natural Resources Library, Department of the Interior, 1849 C Street NW, Main Interior Building, Washington, DC 20240–0001.
- Bureau of Reclamation, Mid-Pacific Regional Office Library, 2800 Cottage Way, W–1825, Sacramento, CA 95825–1898.
- Bureau of Reclamation, South-Central California Area Office, 1243 'N' Street, Fresno, CA 93721–1831.
- Madera Library, 121 North G Street, Madera, CA 93637.
- Chowchilla Library, 300 Kings Avenue, Chowchilla, CA 93610.
- Madera Ranchos Library, 37167 Ave 12 Suite 4C, Madera, CA 93636.
- Fresno County Public Library, 2420 Mariposa, Fresno, CA 93721.
- Clovis Regional Library, 1155 Fifth Street, Clovis, CA 93612.

Public Disclosure

Before including your name, 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: May 5, 2011.

David W. Gore,

Assistant Regional Director, Mid-Pacific Region.

[FR Doc. 2011–14210 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Request for Interest in Lease Arrangement on Federal Lands, San Luis Project, Los Banos, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation), a water management agency within the Department of the Interior (Interior), announces the availability of a Request for Interest (RFI). Reclamation is seeking interest from any entity or entities interested in developing a renewable energy project(s) in a lease arrangement on existing Reclamation lands in the vicinity of the San Luis Project near Los Banos, California.

DATES: To be assured consideration, all Statements of Interest should be received by Reclamation by August 5, 2011.

ADDRESSES: To obtain a copy of this RFI, please contact Barry Mortimeyer, Bureau of Reclamation, Central Valley Operations Office, Mid-Pacific Region, 3310 El Camino Ave, Suite 300, Sacramento, CA 95821, or e-mail *bmortimeyer@usbr.gov.* The RFI is also available on Reclamation's Web site at *http://www.usbr.gov/mp/cvo/renproj.*

FOR FURTHER INFORMATION CONTACT: Contact Barry Mortimeyer at 916–979–3001 or the above e-mail.

SUPPLEMENTARY INFORMATION: Established in 1902, Reclamation has constructed more than 600 dams and reservoirs in the 17 western states along with powerplants and canals at many of those facilities. Reclamation is a water management agency that assists in meeting the increasing water demands of the West while protecting the environment and the public's investment in these structures. Water management efforts emphasize fulfilling water delivery obligations, water conservation, water recycling and reuse, and developing partnerships with our customers, states, and Native American Tribes, and in finding ways to bring together the variety of interests to address the competing needs for our limited water resources.

As part of securing America's energy future, the nation is moving toward a clean-energy economy. Interior has been changing the way it does business by opening its doors to responsible development of renewable energy on its public lands. Interior is facilitating environmentally appropriate renewable-energy projects involving solar, wind and waves, geothermal, biofuels and hydropower. These resources, developed in the right ways and the right places, are intended to curb the dependence on foreign oil, reduce use of fossil fuels, and promote new industries.

This RFI is being issued under authority granted to Reclamation in Section 10 (43 U.S.C. 387) of the Reclamation Act of 1939 which provides the Secretary the authority, at his discretion, to grant leases, licenses, easements, and rights-of-way.

Dated: May 26, 2011.

Paul Fujitani,

Acting Operations Manager, Mid-Pacific Region.

[FR Doc. 2011–14209 Filed 6–7–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–763]

In the Matter of Certain Radio Control Hobby Transmitters and Receivers and Products Containing Same; Notice of a Commission Determination Not To Review Initial Determinations Finding Both Respondents in Default and Terminating the Investigation; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations ("IDs") (Order Nos. 6, 7) of the presiding administrative law judge ("ALJ") finding both respondents in the above-captioned investigation, Koko Technology, Ltd. ("Koko") and Cyclone Toy & Hobby ("Cyclone") of China, in default, and terminating the investigation. The Commission is also requesting briefing on remedy, the public interest, and bonding.

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

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 9, 2011, based on a complaint filed by Horizon Hobby, Inc. ("Horizon") of Champaign, Illinois. 76 *FR* 12995–96 (March 9, 2011). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain radio control hobby transmitters and receivers and products containing same by reason of infringement of certain claims of U.S. Patent No. 7,391,320, U.S. Copyright Reg. No. TX–7–226–001, and U.S. Trademark Reg. No. 3,080,770. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named Koko and Cyclone as the only respondents. The complaint and notice of investigation were served on respondents on March 3, 2011. No responses were received.

On April 11, 2011, Horizon moved, pursuant to 19 CFR 210.16, for the following: (1) An order directing respondents Koko and Cyclone to show cause why they should not be found in default for failure to respond to the complaint and notice of investigation as required by § 210.13; and (2) the issuance of an ID finding Koko and Cyclone in default upon their failure to show cause. Koko and Cyclone did not respond to the motion.

On April 22, 2011, the ALJ issued Order No. 5 which required Koko and Cyclone to show cause no later than May 12, 2011, as to why they should not be held in default and judgment rendered against them pursuant to § 210.16. No response was received from

either Koko or Cyclone to the show cause order.

The ALJ issued Order No. 6 on May 16, 2011, finding both Koko and Cyclone in default, pursuant to § 210.13, 210.16, because neither respondent responded to the complaint and notice of investigation, or to Order No. 5 to show cause. On May 17, 2011, the ALJ issued Order No. 7 terminating the investigation because Koko and Cyclone are the only respondents in the investigation. No party petitioned for review of the IDs pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The Commission has determined not to review the IDs.

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

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

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles may be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. The Commission requests submitters to file a response to the following question:

> Does section 337(j)(3) (19 U.S.C. 1337(j)(3)) or any other statutory authority authorize the Commission to permit default respondents subject to an exclusion order under section 337(g)(1) to import infringing products under bond during the sixty (60) day Presidential period of review? Please cite any relevant statutory language and legislative history.

Complainant and the Commission investigative attorney are requested to submit proposed remedial orders for the Commission's consideration. Complainant is requested to state the date that the patent at issue expires and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on June 24, 2011. Reply submissions must be filed no later than the close of business on July 1, 2011. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

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

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16, 210.42(h), and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.16, 210.42(h), and 210.50).

By order of the Commission.

Issued: June 3, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–14077 Filed 6–7–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–775]

In the Matter of Certain Wireless Communication Devices and Systems, Components Thereof, and Products Containing Same; Notice of Institution of Investigation; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 6, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Linex Technologies, Inc. of Palm Beach Gardens, Florida. A letter supplementing the complaint was filed on May 25, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless communication devices and systems, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent No. 6,757,322 ("the '322 patent") and U.S. Patent No. RE42,219 ("the '219 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the

Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 2011, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless communication devices and systems, components thereof, and products containing same that infringe one or more of claims 9 and 10 of the '322 patent and claims 97, 107–109, 119–121, 131–133, 144, and 145 of the '219 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Linex Technologies, Inc., 13046 Redon Drive, Palm Beach Gardens, FL 33410.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hewlett-Packard Company, 3000 Hanover Street, Palo Alto, CA 94304–1185.

Apple Inc., 1 Infinite Loop, Cupertino, CA 95014.

Aruba Networks, Inc., 1344 Crossman Avenue, Sunnyvale, CA 94089–1113.

Meru Networks, 894 Ross Drive, Sunnyvale, CA 94089.

Ruckus Wireless, 880 West Maude Avenue, Suite 101, Sunnyvale, CA 94085.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: June 2, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–14040 Filed 6–7–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Two Consent Decrees Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on June 1, 2011, two proposed consent decrees in *United States and State of Nebraska* v. *Union Pacific Corp., Union Pacific Railway Co., and Gould Electronics Inc.,* Civil Action No. 8:11–cv–00195, were lodged with the United States District Court for the District of Nebraska.

In that lawsuit, the United States and State of Nebraska seek to recover response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") in connection with the U.S. Environmental Protection Agency's continuing cleanup of the Omaha Lead Superfund Site.

One of the proposed consent decrees will require Union Pacific Corp. and Union Pacific Railway Co. to expend $3.15 million performing community health education in Omaha about the health risks of lead exposure; pay $21,350,000 to the Hazardous Substance Superfund in partial reimbursement of the United States' response costs; pay $100,000 to the United States Department of the Interior; and pay $400,000 to the Nebraska Department of Environmental Quality.

The other proposed consent decree will require Gould Electronics Inc. to pay $1,104,000 to the Hazardous Substance Superfund in partial reimbursement of the United States' response costs and pay $46,000 to the Nebraska Department of Environmental Quality.

For 30 days after the date of this publication, the Department of Justice will receive comments relating to the two proposed consent decrees. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611. Comments should refer to *United States and State of Nebraska* v. *Union Pacific Corp., Union Pacific Railway Co., and Gould Electronics Inc.,* D.J. Ref. 90–11–3–07834/4.

The proposed consent decrees may be examined at the U.S. Environmental Protection Agency's Region 7 office at 901 N. Fifth St., Kansas City, KS 66101 (contact Associate Regional Counsel Steven Sanders (913) 551–7578). During the public comment period, the proposed consent decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A paper copy of the proposed consent decrees may be obtained by mailing a request to the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. When requesting a paper copy by mail, please enclose a

check in the amount of $46.25 for the complete consent decrees or $14.50 for the consent decrees without the appendices (25 cents per page reproduction cost) payable to the U.S. Treasury. A paper copy may also be obtained by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* fax number (202) 514–0097, phone confirmation number (202) 514–1547, and sending a check to the Consent Decree Library at the stated address.

Robert E. Maher, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2011–14098 Filed 6–7–11; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement: Document—Tools for Implementing Inmate Behavior Management; Setting Measurable Goals

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Jails Division is seeking applications for the development of a written guide on how to set measurable goals to ensure success in implementing the six elements of inmate behavior management (IBM), as defined by NIC. This document will be written in the context of inmate behavior management, which is described under **SUPPLEMENTARY INFORMATION** below.

This project will be for an 18-month period and will be carried out in conjunction with the NIC Jails Division. The awardee will work closely with NIC staff on all aspects of the project. To be considered, applicants must demonstrate, at a minimum: (1) In-depth knowledge of the purpose, functions, and operational complexities of local jails, (2) awareness of the diversity among local jails in terms of size, resources, and levels of sophistication, (3) in-depth knowledge of the six elements of inmate behavior management, as defined by NIC, (4) expertise in defining and measuring goals within the context of inmate behavior management, and (5) ability to develop and write documents for publication.

DATES: Applications must be received by 4:00 p.m. EDT on Friday, July 1, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, ext. 0 for pickup. Faxed or emailed applications will not be accepted. Electronic applications can be submitted only via *http://www.grants.gov.*

FOR FURTHER INFORMATION: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Fran Zandi, Correctional Program Specialist, National Institute of Corrections, Jails Division. Ms. Zandi can be reached at 1–800–995–6423, ext. 71070 or by e-mail at *fzandi@bop.gov.*

SUPPLEMENTARY INFORMATION: NIC has identified six key elements in effectively managing inmate behavior in jails: (1) Assessing the risks and needs of each inmate at various points during his/her detention, (2) assigning inmates to appropriate housing, (3) meeting inmates' basic needs, (4) defining and conveying expectations for inmate behavior, (5) supervising inmates, and (6) keeping inmates productively occupied. If a jail fully and properly implements all six elements, it should experience a significant reduction in the negative inmate behavior often experienced in jails, such as vandalism, violence, rule violations, and disrespectful behavior toward staff and other inmates. Applicants can obtain additional information on inmate behavior management by reviewing NIC's "Inmate Behavior Management: The Key to a Safe and Secure Jail". This document is available at *http://nicic.gov/Library/023882.*

The NIC Jails Division offers training and technical assistance on inmate behavior management. It has also begun to develop a series of guides on implementing each of the six elements. This document will be part of the series.

Scope of Work

Document Length: The number of pages will be determined by content. The document will include appendices and a bibliography.

Document Audience: Jail administrators are the primary audience, but the document may also be used by other management staff. This guide is intended for use by jails of all sizes. In developing the document, the awardee must consider the diversity of jails in terms of size, resources available, and level of sophistication.

Document Distribution: NIC expects to distribute the document widely. It will be available on the NIC website and upon request and free of charge through the NIC Information Center.

Document Content: The document will be a clear and practical guide for jail administrators. It will begin with a brief overview of the six elements of inmate behavior management, drawn from NIC's "Inmate Behavior Management: The Key to a Safe and Secure Jail." This will be followed by a discussion of the process of implementing the six elements, with emphasis on the importance of setting measurable goals as the foundation for an implementation plan. Once this context is set, the document will address the following topics, at a minimum, as they relate specifically to implementing inmate behavior management: (1) How to identify goals, (2) how to ensure that goals are relevant and measureable, (3) how to assess the quality of goals and the achievement of outcomes, with sample assessment tools, (4) how to monitor progress in achieving goals and the importance of modifying goals based on monitoring results, (5) strategies for developing staff skills in setting measurable goals, with sample exercises, and (6) policies, procedures, and required documentation related to setting, monitoring, and modifying goals, with samples of each.

NIC Review: The awardee will send the following for NIC review and approval: initial framework for the document, first draft of the document, subsequent drafts based on NIC's suggested revisions, and the final draft.

Final Product: The awardee will produce a completed document that has received initial editing from a professional editor. The awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements," which will be included in the award package. The awardee will deliver the final product to NIC in hard copy and on disk in Word format. NIC will be responsible for the final editing process and document design, but the awardee will remain available during this time to answer questions and to make revisions to the documents. The awardee must also

ensure that all products meet NIC's standards for accessibility and Section 508 compliance.

Meetings: The cooperative agreement awardee will attend an initial meeting with the NIC staff for a project overview and preliminary planning. This will take place shortly after the cooperative agreement is awarded and will be held in Washington, DC. The meeting will last one day.

The awardee should plan to meet with NIC staff up to four times during the course of the cooperative agreement. One meeting will be held in Washington, DC. The others may be held by WebEx or in person, depending on meeting content.

Applicant Conference

An applicant conference will be held on Friday, June 24, 2011 from 1 p.m. to 3 p.m. (EDT) via WebEx. The conference will give applicants the opportunity to meet with NIC project staff and ask questions about the project and the application procedures. Attendance at the conference is optional. Provisions will be made using WebEx technology (telephone and computer-based conferencing). The WebEx session requires applicants to have access to a telephone and computer. Applicants who plan to attend via WebEx should e-mail Fran Zandi, Correctional Program Specialist, NIC Jails Division, at *fzandi@bop.gov* by Monday, June 20, 2011.

Application Requirements: An application package must include OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (e.g., July 1 through June 30); and an outline of projected costs with the budget and strategy narratives described in this announcement. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf.*)

Applications should be concisely written, typed double spaced, and reference the NIC opportunity number and title referenced in this announcement. If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of your full proposal (program and budget narrative, application forms, assurances, and other descriptions). The original should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov.*

The narrative portion of the application should include, at a minimum, a brief paragraph indicating the applicant's understanding of the project's purpose; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a statement or chart of measurable project milestones and timelines for the completion of each milestone; a description of the qualifications of the applicant organization; a resume for the principle and each staff member assigned to the project (including instructors) that documents relevant knowledge, skills, and abilities to carry out the project; and a budget that details all costs for the project, shows consideration for all contingencies for the project, and notes a commitment to work within the proposed budget. The narrative portion of the application should not exceed ten double-spaced typewritten pages, excluding attachments related to the credentials and relevant experience of staff.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for the activities that are linked to the desired outcome of the project. The funding amount should not exceed $20,000.

Eligibility of Applicants: An eligible applicant is any state or general unit of local government, private agency, educational institution, organization, individual, or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications will be reviewed by a team of NIC staff. Among the criteria used to evaluate the applications are indication of a clear understanding of the project requirements; background, experience, and expertise of the proposed project staff, including any sub-contractors; effectiveness of the creative approach to the project; clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks; technical soundness of project design and methodology; financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed; and indication of availability to meet with NIC staff.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR). Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 800–333–0505. Applicants who are sole proprietors should dial 866–705–5711 and select option #1.

Applicants may register in the CCR online at the CCR *Web site: http://www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 11JA07.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2011–14048 Filed 6–7–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

New Jail Planning Initiative; Review and Revision

The following funding opportunity was published on Friday, May 20, 2011 in Volume 76, Issue 98.

Solicitation for a Cooperative Agreement—New Jail Planning Initiative: Review and Revision. Funding Opportunity Number 11JA03, found on pages 29268–29271. "Notice"—Two corrections have been made to this solicitation. First, NIC has deleted the following statement from the original document: "The narrative portion of the application should not exceed ten double-spaced typewritten pages, excluding attachments related to the credentials and relevant experience of staff." There is now no limitation on the length of the narrative.

Second, NIC has deleted the following review criteria listed under Applicant Organization and Project Staff Background on the original document: "Do the primary project personnel, individually or collectively, have

expertise on the key elements in jail administration?"

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2011–14050 Filed 6–7–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

Employment and Training Administration Program Year (PY) 2011 Allotments for the Workforce Investment Act (WIA), Section 166, Indian and Native American Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: This Notice announces final allotments for PY 2011 for the WIA, Section 166 program. The WIA allotments for the Section 166 program are based on formulas defined at 20 CFR 668.296 and 20 CFR 668.440.

DATES: This Notice is effective on June 8, 2011.

FOR FURTHER INFORMATION CONTACT: Evangeline Campbell at (202) 693–3737.

SUPPLEMENTARY INFORMATION: The Department of Labor (the Department) is announcing WIA final allotments for PY 2011 for the Section 166 program. This Notice provides information on the amount of funds available during PY 2011 to WIA Section 166 grantees with an approved plan for PY 2011.

The allotments are based on the funds appropriated in the Full-Year Continuing Appropriations Act, 2011, Public Law (Pub. L.) 112–10, signed April 15, 2011. This appropriation requires an across-the-board rescission of 0.2 percent to all Federal Fiscal Year (FY) 2011 discretionary funding for the programs covered by this TEGL. Included below are tables listing the PY 2011 allotments (including the 0.2 percent rescission) for the WIA Section 166 Supplemental Youth Service Program (Table A—youth) and the Comprehensive Service Program (Table B—adult).

Pursuant to the Indian Employment and Training and Related Services Demonstration Act of 1992 (Pub. L. 102–477), federally recognized tribes and Native Alaska entities can integrate employment and training and related services into a single program which is administered by the U.S. Department of Interior (DOI). Fifty-four WIA Section 166 grantees participate in the Public Law 102–477 program. The funding allotments and administrative oversight for these 54 grants are transferred to the DOI. For PY 2011, a total of $4,042,359 in WIA youth funding and $10,026,102 in WIA adult funding will be transferred to the DOI. Public Law 102–477 grant allotments are identified in the "Grant Type" column in tables A and B.

WIA Section 166- Supplemental Youth Service Program (Youth) Allotments. The Full-Year Continuing Appropriations Act made available to the Department $825,914 million for training and employment services for WIA Youth Activities. Under the WIA, Employment and Training Administration (ETA) will reserve 1.5 percent of funds appropriated for youth activities to make available $12,388,708 for the WIA Section 166, Indian and Native American Supplement Youth Service program. This is $1,472, 327 less than PY 2010 and represents a 10.6 percent overall decrease from PY 2010 (including the 0.2 percent rescission). Table A includes a breakdown of the WIA Section 166 youth program allotments for PY 2011 and provides a comparison to PY 2010 youth allotments. In determining the youth allotments for individual grantees, the Department used the formula calculation provided at 20 CFR 668.440 of the WIA regulations which states:

(a) Beginning with PY 2000, supplemental youth funding will be allocated to eligible INA grantees on the basis of the relative number of Native American youth between the ages of 14 and 21, inclusive, in the grantee's designated INA service area as compared to the number of Native American youth in other eligible INA service areas.

WIA Section 166- Comprehensive Service Program (Adult) Allotments. PY 2011 WIA Section 166 adult funds total $52,652,484 (including the 0.2 percent rescission). Table B includes a breakdown of the WIA Section 166 adult program allotments for PY 2011 and provides a comparison to PY 2010 adult allotments. Prior to allocating the full appropriation to INA grantees, the Department—in consultation with the Native American Employment and Training Council—reserved 1 percent ($526,525) for technical assistance and training purposes pursuant to WIA regulation at 20 CFR 668.296(e). Therefore, the amount available for allocation to INA grantees is $52,125,959. In determining the adult allotments, the Department used the formula calculation provided at 20 CFR 668.296(b) of the WIA regulations which states:

(b) Each INA grantee will receive the sum of the funds calculated under the following formula:

(1) One-quarter of the funds available will be allocated on the basis of the number of unemployed Native American persons in the grantee's designated INA service area(s) compared to all such persons in all such areas in the United States.

(2) Three-quarters of the funds available will be allocated on the basis of the number of Native American persons in poverty in the grantee's designated INA service area(s) as compared to all such persons in all such areas in the United States.

(3) The data and definitions used to implement these formulas are provided by the U.S. Bureau of the Census.

Census 2000 data was used to calculate the WIA Section 166 PY 2011 allotments. ETA continues to work with the Census Bureau regarding the American Community Survey and updated data are not available at this time. ETA will consult with WIA Section 166 grantees when new data is available for use in calculating allocation formulas.

Signed in Washington, DC on this 2nd day of June 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration

TABLE A—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA YOUTH PROGRAM COMPARISON OF PY 2011 VS PY 2010

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
Total		.....	$13,861,035	$12,388,708	($1,472,327)	−10.60%
AL	Inter-Tribal Council of Alabama	.....	$5,098.00	$4,556.00	($542)	−10.60%
AK	Aleutian/Pribilof Islands Association	477	$12,073.00	$10,791.00	($1,282)	−10.60%

TABLE A—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA YOUTH PROGRAM COMPARISON OF PY 2011 VS PY 2010—Continued

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
AK	Association of Village Council Presidents	477	$165,274.00	$147,718.00	($17,556)	−10.60%
AK	Bristol Bay Native Association	477	$48,294.00	$43,164.00	($5,130)	−10.60%
AK	Central Council of Tlingit and Haida	477	$68,417.00	$61,150.00	($7,267)	−10.60%
AK	Chugachmiut	477	$5,902.00	$5,275.00	($627)	−10.60%
AK	Cook Inlet Tribal Council	477	$147,030.00	$131,412.00	($15,618)	−10.60%
AK	Copper River Native Association	477	$9,390.00	$8,393.00	($997)	−10.60%
AK	Kawerak Incorporated	477	$60,368.00	$53,955.00	($6,413)	−10.60%
AK	Kenaitze Indian Tribe	.....	$22,806.00	$20,383.00	($2,423)	−10.60%
AK	Kodiak Area Native Association	477	$9,390.00	$8,393.00	($997)	−10.60%
AK	Maniilaq Association Inc.	477	$52,319.00	$46,761.00	($5,558)	−10.60%
AK	Metlakatla Indian Community	477	$5,366.00	$4,796.00	($570)	−10.60%
AK	Orutsararmuit Native Council	477	$16,098.00	$14,388.00	($1,710)	−10.60%
AK	Tanana Chiefs Conference, Inc.	477	$114,028.00	$101,916.00	($12,112)	−10.60%
AZ	Colorado River Indian Tribes	.....	$32,196.00	$28,777.00	($3,419)	−10.60%
AZ	Gila River Indian Community	.....	$211,959.00	$189,444.00	($22,515)	−10.60%
AZ	Hopi Tribal Council	.....	$118,053.00	$105,514.00	($12,539)	−10.60%
AZ	Hualapai Tribe	.....	$20,123.00	$17,985.00	($2,138)	−10.60%
AZ	Inter Tribal Council of Arizona, Inc.	.....	$38,367.00	$34,292.00	($4,075)	−10.60%
AZ	Navajo Nation	.....	$3,077,429.00	$2,750,542.00	($326,887)	−10.60%
AZ	Pasqua Yaqui Tribe	.....	$55,002.00	$49,160.00	($5,842)	−10.60%
AZ	Quechan Indian Tribe	.....	$17,440.00	$15,587.00	($1,853)	−10.60%
AZ	Salt River Pima-Maricopa Indian Community	.....	$52,319.00	$46,761.00	($5,558)	−10.60%
AZ	San Carlos Apache Tribe	.....	$222,691.00	$199,036.00	($23,655)	−10.60%
AZ	Tohono O'Odham Nation	477	$224,033.00	$200,236.00	($23,797)	−10.60%
AZ	White Mountain Apache Tribe	.....	$266,961.00	$238,604.00	($28,357)	−10.60%
CA	California Indian Manpower Consortium	.....	$111,614.00	$99,758.00	($11,856)	−10.60%
CA	Northern CA Indian Development Council	.....	$61,978.00	$55,395.00	($6,583)	−10.60%
CA	Tule River Tribal Council	.....	$8,050.00	$7,194.00	($856)	−10.60%
CO	Southern Ute Indian Tribe	.....	$10,732.00	$9,593.00	($1,139)	−10.60%
CO	Ute Mountain Ute Indian Tribe	.....	$22,806.00	$20,383.00	($2,423)	−10.60%
FL	Miccosukee Corporation	.....	$5,634.00	$5,036.00	($598)	−10.60%
HI	Alu Like, Inc.	.....	$1,875,434.00	$1,676,224.00	($199,210)	−10.60%
ID	Nez Perce Tribe	477	$15,561.00	$13,909.00	($1,652)	−10.60%
ID	Shoshone-Bannock Tribes	477	$57,685.00	$51,558.00	($6,127)	−10.60%
KS	United Tribes of Kansas and S.E. Nebraska	.....	$10,464.00	$9,352.00	($1,112)	−10.60%
LA	Inter-Tribal Council of Louisiana, Inc.	.....	$4,025.00	$3,597.00	($428)	−10.60%
ME	Penobscot Nation	.....	$25,221.00	$22,542.00	($2,679)	−10.60%
MI	Inter-Tribal Council of Michigan, Inc.	.....	$29,513.00	$26,378.00	($3,135)	−10.60%
MI	Sault Ste. Marie Tribe of Chippewa Indians	.....	$19,586.00	$17,506.00	($2,080)	−10.60%
MN	Bois Forte R.B.C.	.....	$9,123.00	$8,154.00	($969)	−10.60%
MN	Fond Du Lac R.B.C.	.....	$18,244.00	$16,307.00	($1,937)	−10.60%
MN	Leech Lake R.B.C.	.....	$53,392.00	$47,721.00	($5,671)	−10.60%
MN	Mille Lacs Band of Chippewa Indians	477	$23,879.00	$21,342.00	($2,537)	−10.60%
MN	Red Lake Tribal Council	477	$84,515.00	$75,538.00	($8,977)	−10.60%
MN	White Earth R.B.C.	477	$55,002.00	$49,160.00	($5,842)	−10.60%
MS	Mississippi Band of Choctaw Indians	.....	$68,149.00	$60,910.00	($7,239)	−10.60%
MO	American Indian Council	.....	$9,390.00	$8,393.00	($997)	−10.60%
MT	Assiniboine & Sioux Tribes	477	$138,176.00	$123,499.00	($14,677)	−10.60%
MT	B.C. of the Chippewa Cree Tribe	.....	$38,904.00	$34,771.00	($4,133)	−10.60%
MT	Blackfeet Tribal Business Council	477	$127,443.00	$113,906.00	($13,537)	−10.60%
MT	Confederated Salish & Kootenai Tribes	477	$139,518.00	$124,698.00	($14,820)	−10.60%
MT	Crow Indian Tribe	.....	$88,272.00	$78,895.00	($9,377)	−10.60%
MT	Fort Belknap Indian Community	477	$50,977.00	$45,563.00	($5,414)	−10.60%
MT	Northern Cheyenne Tribe	.....	$99,272.00	$88,727.00	($10,545)	−10.60%
NE	Omaha Tribe of Nebraska	.....	$46,953.00	$41,965.00	($4,988)	−10.60%
NE	Winnebago Tribe	477	$21,464.00	$19,184.00	($2,280)	−10.60%
NV	Inter-Tribal Council of Nevada	.....	$49,099.00	$43,884.00	($5,215)	−10.60%
NV	Reno Sparks Indian Colony	477	$9,390.00	$8,393.00	($997)	−10.60%
NV	Shoshone-Paiute Tribes	477	$14,757.00	$13,189.00	($1,568)	−10.60%
NM	Alamo Navajo School Board	.....	$49,636.00	$44,364.00	($5,272)	−10.60%
NM	Eight Northern Indian Pueblo Council	.....	$13,952.00	$12,470.00	($1,482)	−10.60%
NM	Five Sandoval Indian Pueblos, Inc.	.....	$93,638.00	$83,692.00	($9,946)	−10.60%
NM	Jicarilla Apache Tribe	.....	$28,171.00	$25,180.00	($2,991)	−10.60%
NM	Mescalero Apache Tribe	.....	$61,709.00	$55,155.00	($6,554)	−10.60%
NM	Ohkay Owingeh	477	$13,415.00	$11,990.00	($1,425)	−10.60%
NM	Pueblo of Acoma	.....	$30,855.00	$27,577.00	($3,278)	−10.60%
NM	Pueblo of Isleta	.....	$11,805.00	$10,551.00	($1,254)	−10.60%
NM	Pueblo of Laguna	477	$37,563.00	$33,573.00	($3,990)	−10.60%
NM	Pueblo of Taos	477	$18,781.00	$16,786.00	($1,995)	−10.60%

TABLE A—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA YOUTH PROGRAM COMPARISON OF PY 2011 VS PY 2010—Continued

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
NM	Pueblo of Zuni	477	$130,126.00	$116,305.00	($13,821)	−10.60%
NM	Ramah Navajo School Board, Inc.		$30,855.00	$27,577.00	($3,278)	−10.60%
NM	Santa Clara Indian Pueblo		$13,415.00	$11,990.00	($1,425)	−10.60%
NM	Santo Domingo Tribe		$45,611.00	$40,767.00	($4,844)	−10.60%
NY	American Indian Community House, Inc.		$9,123.00	$8,154.00	($969)	−10.60%
NY	Native American Cultural Center, Inc.		$3,219.00	$2,878.00	($341)	−10.60%
NY	Seneca Nation of Indians	477	$32,196.00	$28,777.00	($3,419)	−10.60%
NY	St. Regis Mohawk Tribe		$22,806.00	$20,383.00	($2,423)	−10.60%
NC	Eastern Band of Cherokee Indians		$57,685.00	$51,558.00	($6,127)	−10.60%
ND	Spirit Lake Sioux Tribe	477	$75,125.00	$67,145.00	($7,980)	−10.60%
ND	Standing Rock Sioux Tribe		$124,761.00	$111,508.00	($13,253)	−10.60%
ND	Three Affiliated Tribes	477	$56,344.00	$50,358.00	($5,986)	−10.60%
ND	Turtle Mountain Band of Chippewa Indians		$128,785.00	$115,105.00	($13,680)	−10.60%
OK	Absentee Shawnee Tribe of Oklahoma		$13,146.00	$11,751.00	($1,395)	−10.60%
OK	Cherokee Nation of Oklahoma	477	$677,732.00	$605,743.00	($71,989)	−10.60%
OK	Cheyenne-Arapaho Tribes		$104,638.00	$93,524.00	($11,114)	−10.60%
OK	Chickasaw Nation of Oklahoma	477	$203,641.00	$182,011.00	($21,630)	−10.60%
OK	Choctaw Nation of Oklahoma	477	$292,450.00	$261,385.00	($31,065)	−10.60%
OK	Citizen Potawatomi Nation	477	$219,740.00	$196,398.00	($23,342)	−10.60%
OK	Comanche Tribe of Oklahoma		$72,442.00	$64,747.00	($7,695)	−10.60%
OK	Creek Nation of Oklahoma	477	$356,842.00	$318,938.00	($37,904)	−10.60%
OK	Four Tribes Consortium of Oklahoma		$68,149.00	$60,910.00	($7,239)	−10.60%
OK	Inter-Tribal Council of N.E. Oklahoma		$27,098.00	$24,220.00	($2,878)	−10.60%
OK	Kiowa Tribe of Oklahoma		$90,418.00	$80,814.00	($9,604)	−10.60%
OK	Osage Tribal Council	477	$52,319.00	$46,761.00	($5,558)	−10.60%
OK	OTOE–Missouria Tribe of Oklahoma		$16,903.00	$15,107.00	($1,796)	−10.60%
OK	Pawnee Tribe of Oklahoma	477	$14,757.00	$13,189.00	($1,568)	−10.60%
OK	Ponca Tribe of Oklahoma		$56,075.00	$50,119.00	($5,956)	−10.60%
OK	Seminole Nation of Oklahoma		$72,442.00	$64,747.00	($7,695)	−10.60%
OK	Tonkawa Tribe of Oklahoma		$28,171.00	$25,180.00	($2,991)	−10.60%
OK	United Urban Indian Council, Inc.		$199,885.00	$178,653.00	($21,232)	−10.60%
OR	Confed. Tribes of Siletz Indians of Orego	477	$1,073.00	$959.00	($114)	−10.60%
OR	Confed. Tribes of the Umatilla Indian Res	477	$14,757.00	$13,189.00	($1,568)	−10.60%
OR	Confederated Tribes of Warm Springs		$41,587.00	$37,170.00	($4,417)	−10.60%
OR	Organization of Forgotten Americans		$6,171.00	$5,516.00	($655)	−10.60%
SC	South Carolina Indian Development Council, Inc.		$2,683.00	$2,398.00	($285)	−10.60%
SD	Cheyenne River Sioux Tribe	477	$142,201.00	$127,096.00	($15,105)	−10.60%
SD	Lower Brule Sioux Tribe		$20,123.00	$17,985.00	($2,138)	−10.60%
SD	Oglala Sioux Tribe		$417,210.00	$372,893.00	($44,317)	−10.60%
SD	Rosebud Sioux Tribe	477	$245,496.00	$219,420.00	($26,076)	−10.60%
SD	Sisseton-Wahpeton Sioux Tribe	477	$59,026.00	$52,757.00	($6,269)	−10.60%
SD	United Sioux Tribe Development Corp.		$13,415.00	$11,990.00	($1,425)	−10.60%
SD	Yankton Sioux Tribe		$53,661.00	$47,961.00	($5,700)	−10.60%
TX	Alabama-Coushatta Indian Tribal Council		$1,073.00	$959.00	($114)	−10.60%
TX	Ysleta del Sur Pueblo		$17,440.00	$15,587.00	($1,853)	−10.60%
UT	Indian Training & Education Center		$5,902.00	$5,275.00	($627)	−10.60%
UT	Ute Indian Tribe		$60,368.00	$53,955.00	($6,413)	−10.60%
WA	American Indian Community Center		$18,244.00	$16,307.00	($1,937)	−10.60%
WA	Colville Confederated Tribes	477	$49,636.00	$44,364.00	($5,272)	−10.60%
WA	Confederated Tribes & Bands of the Yakama Nation		$109,736.00	$98,079.00	($11,657)	−10.60%
WA	Lummi Indian Business Council		$26,830.00	$23,980.00	($2,850)	−10.60%
WA	Makah Tribal Council	477	$13,415.00	$11,990.00	($1,425)	−10.60%
WA	Puyallup Tribe of Indians		$14,488.00	$12,949.00	($1,539)	−10.60%
WA	Spokane Reservation	477	$24,148.00	$21,583.00	($2,565)	−10.60%
WA	The Tulalip Tribes	477	$21,464.00	$19,184.00	($2,280)	−10.60%
WA	Western WA Indian Employment and Training Program.		$78,613.00	$70,263.00	($8,350)	−10.60%
WI	Ho-Chunk Nation	477	$4,829.00	$4,316.00	($513)	−10.60%
WI	Lac Courte Oreilles Tribal Governing Board		$33,538.00	$29,975.00	($3,563)	−10.60%
WI	Lac Du Flambeau Band of Lake Superior Chippewa		$12,073.00	$10,791.00	($1,282)	−10.60%
WI	Menominee Indian Tribe of Wisconsin	477	$49,636.00	$44,364.00	($5,272)	−10.60%
WI	Oneida Tribe of Indians of WI, Inc.		$16,098.00	$14,388.00	($1,710)	−10.60%
WI	Stockbridge-Munsee Community	477	$3,756.00	$3,357.00	($399)	−10.60%
WI	Wisconsin Indian Consortium		$26,562.00	$23,741.00	($2,821)	−10.60%
WY	Eastern Shoshone Tribe	477	$35,952.00	$32,134.00	($3,818)	−10.60%
WY	Northern Arapaho Business Council		$80,759.00	$72,180.00	($8,579)	−10.60%

TABLE B—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA ADULT PROGRAM COMPARISON OF PY 2011 VS PY 2010

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
Total			**$52,230,420**	**$52,125,959**	**($104,461)**	**−0.2%**
AL	Inter-Tribal Council of Alabama		$277,190.00	$276,637.00	($553.00)	−0.2%
AL	Poarch Band of Creek Indians		$88,865.00	$88,688.00	($177.00)	−0.2%
AK	Aleutian/Pribilof Islands Association	477	$26,928.00	$26,875.00	($53.00)	−0.2%
AK	Association of Village Council Presidents	477	$386,373.00	$385,601.00	($772.00)	−0.2%
AK	Bristol Bay Native Association	477	$111,316.00	$111,093.00	($223.00)	−0.2%
AK	Central Council of Tlingit and Haida	477	$181,928.00	$181,564.00	($364.00)	−0.2%
AK	Chugachmiut	477	$26,237.00	$26,184.00	($53.00)	−0.2%
AK	Cook Inlet Tribal Council	477	$416,590.00	$415,757.00	($833.00)	−0.2%
AK	Copper River Native Association	477	$17,627.00	$17,592.00	($35.00)	−0.2%
AK	Kawerak Incorporated	477	$144,916.00	$144,626.00	($290.00)	−0.2%
AK	Kenaitze Indian Tribe		$41,637.00	$41,553.00	($84.00)	−0.2%
AK	Kodiak Area Native Association	477	$27,362.00	$27,307.00	($55.00)	−0.2%
AK	Maniilaq Association	477	$108,540.00	$108,323.00	($217.00)	−0.2%
AK	Metlakatla Indian Community	477	$17,554.00	$17,519.00	($35.00)	−0.2%
AK	Orutsararmuit Native Council	477	$49,720.00	$49,621.00	($99.00)	−0.2%
AK	Tanana Chiefs Conference, Inc.	477	$272,815.00	$272,269.00	($546.00)	−0.2%
AZ	American Indian Association of Tucson		$325,398.00	$324,747.00	($651.00)	−0.2%
AZ	Colorado River Indian Tribes		$59,581.00	$59,462.00	($119.00)	−0.2%
AZ	Gila River Indian Community		$491,148.00	$490,166.00	($982.00)	−0.2%
AZ	Hopi Tribal Council		$209,160.00	$208,741.00	($419.00)	−0.2%
AZ	Hualapai Tribe		$31,340.00	$31,278.00	($62.00)	−0.2%
AZ	Inter Tribal Council of Arizona, Inc.		$76,735.00	$76,581.00	($154.00)	−0.2%
AZ	Native Americans for Community Action		$190,197.00	$189,816.00	($381.00)	−0.2%
AZ	Navajo Nation		$5,866,074.00	$5,854,341.00	($11,733.00)	−0.2%
AZ	Pasqua Yaqui Tribe		$96,703.00	$96,510.00	($193.00)	−0.2%
AZ	Phoenix Indian Center, Inc.		$1,182,685.00	$1,180,320.00	($2,365.00)	−0.2%
AZ	Quechan Indian Tribe		$32,332.00	$32,268.00	($64.00)	−0.2%
AZ	Salt River Pima-Maricopa Indian Community		$81,466.00	$81,302.00	($164.00)	−0.2%
AZ	San Carlos Apache Tribe		$370,912.00	$370,171.00	($741.00)	−0.2%
AZ	Tohono O'Odham Nation	477	$356,687.00	$355,973.00	($714.00)	−0.2%
AZ	White Mountain Apache Tribe		$436,921.00	$436,047.00	($874.00)	−0.2%
AR	American Indian Center of Arkansas, Inc.		$306,678.00	$306,065.00	($613.00)	−0.2%
CA	California Indian Manpower Consortium		$3,205,990.00	$3,199,577.00	($6,413.00)	−0.2%
CA	Candelaria American Indian Council		$308,677.00	$308,060.00	($617.00)	−0.2%
CA	Indian Human Resources Center, Inc.		$323,540.00	$322,893.00	($647.00)	−0.2%
CA	Northern CA Indian Development Council		$288,094.00	$287,517.00	($577.00)	−0.2%
CA	Southern CA Indian Center, Inc.		$1,580,742.00	$1,577,580.00	($3,162.00)	−0.2%
CA	Tule River Tribal Council		$117,970.00	$117,734.00	($236.00)	−0.2%
CA	United Indian Nations, Inc.		$424,584.00	$423,734.00	($850.00)	−0.2%
CA	Ya-Ka-Ama Indian Education & Development		$60,253.00	$60,133.00	($120.00)	−0.2%
CO	Denver Indian Center		$598,091.00	$596,895.00	($1,196.00)	−0.2%
CO	Southern Ute Indian Tribe		$36,038.00	$35,966.00	($72.00)	−0.2%
CO	Ute Mountain Ute Indian Tribe		$83,054.00	$82,887.00	($167.00)	−0.2%
FL	Florida Governor's Council on Indian Affairs		$1,098,961.00	$1,096,763.00	($2,198.00)	−0.2%
FL	Miccosukee Corporation		$114,430.00	$114,201.00	($229.00)	−0.2%
HI	Alu Like, Inc.		$1,266,654.00	$1,264,120.00	($2,534.00)	−0.2%
ID	Nez Perce Tribe	477	$65,991.00	$65,860.00	($131.00)	−0.2%
ID	Shoshone-Bannock Tribes	477	$171,425.00	$171,082.00	($343.00)	−0.2%
IN	American Indian Center of Indiana, Inc.		$226,289.00	$225,837.00	($452.00)	−0.2%
KS	United Tribes of Kansas and S.E. Nebraska		$191,961.00	$191,577.00	($384.00)	−0.2%
LA	Inter-Tribal Council of Louisiana, Inc.		$465,403.00	$464,472.00	($931.00)	−0.2%
ME	Penobscot Nation		$180,349.00	$179,988.00	($361.00)	−0.2%
MA	Mashpee-Wampanoag Indian Tribal Council, Inc.		$55,496.00	$55,386.00	($110.00)	−0.2%
MA	North American Indian Center of Boston		$200,916.00	$200,515.00	($401.00)	−0.2%
MI	Grand Traverse Band of Ottawa & Chippewa Indians	477	$29,656.00	$29,596.00	($60.00)	−0.2%
MI	Inter-Tribal Council of Michigan, Inc.		$64,599.00	$64,469.00	($130.00)	−0.2%
MI	MI Indian Employment and Training Services, Inc.		$441,645.00	$440,762.00	($883.00)	−0.2%
MI	North American Indian Association of Detroit		$131,715.00	$131,452.00	($263.00)	−0.2%
MI	Potawatomi Indian Nation		$57,364.00	$57,249.00	($115.00)	−0.2%
MI	Sault Ste. Marie Tribe of Chippewa Indians		$157,849.00	$157,533.00	($316.00)	−0.2%
MI	Southeastern Michigan Indians. Inc.		$70,470.00	$70,328.00	($142.00)	−0.2%
MN	American Indian OIC		$246,186.00	$245,693.00	($493.00)	−0.2%
MN	Bois Forte R.B.C.		$18,822.00	$18,785.00	($37.00)	−0.2%
MN	Fond Du Lac R.B.C.		$183,645.00	$183,278.00	($367.00)	−0.2%
MN	Leech Lake R.B.C.		$141,644.00	$141,362.00	($282.00)	−0.2%
MN	Mille Lacs Band of Chippewa Indians	477	$50,990.00	$50,887.00	($103.00)	−0.2%
MN	Minneapolis American Indian Center		$326,775.00	$326,121.00	($654.00)	−0.2%
MN	Red Lake Tribal Council	477	$205,262.00	$204,852.00	($410.00)	−0.2%

TABLE B—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA ADULT PROGRAM COMPARISON OF PY 2011 VS PY 2010—Continued

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
MN	White Earth R.B.C.	477	$111,452.00	$111,230.00	($222.00)	−0.2%
MS	Mississippi Band of Choctaw Indians		$277,614.00	$277,058.00	($556.00)	−0.2%
MO	American Indian Council		$682,505.00	$681,140.00	($1,364.00)	−0.2%
MT	Assiniboine & Sioux Tribes	477	$252,600.00	$252,095.00	($505.00)	−0.2%
MT	B.C. of the Chippewa Cree Tribe		$130,561.00	$130,299.00	($262.00)	−0.2%
MT	Blackfeet Tribal Business Council	477	$265,919.00	$265,387.00	($532.00)	−0.2%
MT	Confederated Salish & Kootenai Tribes	477	$261,358.00	$260,835.00	($523.00)	−0.2%
MT	Crow Indian Tribe		$152,184.00	$151,880.00	($304.00)	−0.2%
MT	Fort Belknap Indian Community	477	$112,879.00	$112,653.00	($226.00)	−0.2%
MT	Montana United Indian Association		$317,280.00	$316,646.00	($634.00)	−0.2%
MT	Northern Cheyenne Tribe		$197,817.00	$197,422.00	($395.00)	−0.2%
NE	Indian Center, Inc.		$261,692.00	$261,168.00	($524.00)	−0.2%
NE	Omaha Tribe of Nebraska		$73,297.00	$73,150.00	($147.00)	−0.2%
NE	Winnebago Tribe	477	$41,413.00	$41,330.00	($83.00)	−0.2%
NV	Inter-Tribal Council of Nevada		$261,813.00	$261,290.00	($523.00)	−0.2%
NV	Las Vegas Indian Center, Inc.		$176,700.00	$176,347.00	($353.00)	−0.2%
NV	Reno Sparks Indian Colony	477	$15,716.00	$15,684.00	($32.00)	−0.2%
NV	Shoshone-Paiute Tribes	477	$112,911.00	$112,685.00	($226.00)	−0.2%
NM	Alamo Navajo School Board		$82,440.00	$82,274.00	($166.00)	−0.2%
NM	Eight Northern Indian Pueblo Council		$37,862.00	$37,785.00	($77.00)	−0.2%
NM	Five Sandoval Indian Pueblos, Inc.		$141,700.00	$141,417.00	($283.00)	−0.2%
NM	Jicarilla Apache Tribe		$57,128.00	$57,015.00	($113.00)	−0.2%
NM	Mescalero Apache Tribe		$81,079.00	$80,917.00	($162.00)	−0.2%
NM	National Indian Youth Council		$1,480,573.00	$1,477,611.00	($2,962.00)	−0.2%
NM	Ohkay Owingeh	477	$24,668.00	$24,618.00	($50.00)	−0.2%
NM	Pueblo of Acoma		$125,954.00	$125,703.00	($251.00)	−0.2%
NM	Pueblo of Isleta		$36,910.00	$36,835.00	($75.00)	−0.2%
NM	Pueblo of Laguna	477	$80,675.00	$80,514.00	($161.00)	−0.2%
NM	Pueblo of Taos	477	$37,663.00	$37,588.00	($75.00)	−0.2%
NM	Pueblo of Zuni	477	$263,696.00	$263,169.00	($527.00)	−0.2%
NM	Ramah Navajo School Board, Inc.		$83,337.00	$83,170.00	($167.00)	−0.2%
NM	Santa Clara Indian Pueblo		$30,010.00	$29,949.00	($61.00)	−0.2%
NM	Santo Domingo Tribe		$92,659.00	$92,474.00	($185.00)	−0.2%
NY	American Indian Community House, Inc.		$1,064,583.00	$1,062,453.00	($2,130.00)	−0.2%
NY	Native Am. Comm. Services of Erie & Niagara Co		$147,302.00	$147,008.00	($294.00)	−0.2%
NY	Native American Cultural Center, Inc.		$192,256.00	$191,871.00	($385.00)	−0.2%
NY	Seneca Nation of Indians	477	$220,100.00	$219,659.00	($441.00)	−0.2%
NY	St. Regis Mohawk Tribe		$128,653.00	$128,396.00	($257.00)	−0.2%
NC	Cumberland County Association for Indian People		$60,136.00	$60,015.00	($121.00)	−0.2%
NC	Eastern Band of Cherokee Indians		$152,994.00	$152,688.00	($306.00)	−0.2%
NC	Guilford Native American Association		$72,480.00	$72,336.00	($144.00)	−0.2%
NC	Haliwa-Saponi Tribe, Inc.		$56,467.00	$56,354.00	($113.00)	−0.2%
NC	Lumbee Regional Development Association		$949,302.00	$947,402.00	($1,900)	−0.2%
NC	Metrolina Native American Association		$108,405.00	$108,188.00	($217.00)	−0.2%
NC	North Carolina Commission of Indian Affairs		$275,085.00	$274,534.00	($551.00)	−0.2%
ND	Spirit Lake Sioux Tribe	477	$144,464.00	$144,176.00	($288.00)	−0.2%
ND	Standing Rock Sioux Tribe		$209,141.00	$208,722.00	($419.00)	−0.2%
ND	Three Affiliated Tribes—Ft. Berthold Reservation	477	$174,680.00	$174,331.00	($349.00)	−0.2%
ND	Turtle Mountain Band of Chippewa Indians		$284,761.00	$284,191.00	($570.00)	−0.2%
ND	United Tribes Technical College		$222,882.00	$222,437.00	($445.00)	−0.2%
OH	North America Indian Cultural Centers		$488,419.00	$487,442.00	($977.00)	−0.2%
OK	Absentee Shawnee Tribe of Oklahoma		$21,668.00	$21,624.00	($44.00)	−0.2%
OK	Cherokee Nation of Oklahoma	477	$1,254,875.00	$1,252,364.00	($2,511.00)	−0.2%
OK	Cheyenne-Arapaho Tribes		$150,266.00	$149,965.00	($301.00)	−0.2%
OK	Chickasaw Nation of Oklahoma	477	$343,500.00	$342,813.00	($687.00)	−0.2%
OK	Choctaw Nation of Oklahoma	477	$551,732.00	$550,629.00	($1,103.00)	−0.2%
OK	Citizen Potawatomi Nation	477	$308,057.00	$307,441.00	($616.00)	−0.2%
OK	Comanche Tribe of Oklahoma		$146,748.00	$146,454.00	($294.00)	−0.2%
OK	Creek Nation of Oklahoma	477	$690,089.00	$688,710.00	($1,379.00)	−0.2%
OK	Four Tribes Consortium of Oklahoma		$92,655.00	$92,471.00	($184.00)	−0.2%
OK	Inter-Tribal Council of N.E. Oklahoma		$71,135.00	$70,993.00	($142.00)	−0.2%
OK	Kiowa Tribe of Oklahoma		$122,021.00	$121,777.00	($244.00)	−0.2%
OK	Osage Tribal Council	477	$93,119.00	$92,932.00	($187.00)	−0.2%
OK	OTOE–Missouria Tribe of Oklahoma		$31,432.00	$31,369.00	($63.00)	−0.2%
OK	Pawnee Tribe of Oklahoma	477	$29,942.00	$29,883.00	($59.00)	−0.2%
OK	Ponca Tribe of Oklahoma		$78,487.00	$78,331.00	($156.00)	−0.2%
OK	Seminole Nation of Oklahoma		$95,747.00	$95,557.00	($190.00)	−0.2%
OK	Tonkawa Tribe of Oklahoma		$59,908.00	$59,788.00	($120.00)	−0.2%
OK	United Urban Indian Council, Inc.		$349,543.00	$348,844.00	($699.00)	−0.2%

TABLE B—EMPLOYMENT AND TRAINING ACTIVITIES NATIVE AMERICAN, SECTION 166, WIA ADULT PROGRAM COMPARISON OF PY 2011 VS PY 2010—Continued

[U.S. Department of Labor]

State	Grantee Name	Grant Type	PY 2010	PY 2011	Difference	% Diff
OK	Wyandotte Tribe of Oklahoma	.....	$104,567.00	$104,358.00	($209.00)	−0.2%
OR	Confed. Tribes of Siletz Indians of Orego	477	$420,150.00	$419,310.00	($840.00)	−0.2%
OR	Confed. Tribes of the Umatilla Indian Res	477	$26,212.00	$26,159.00	($53.00)	−0.2%
OR	Confederated Tribes of Warm Springs	.....	$122,984.00	$122,738.00	($246.00)	−0.2%
OR	Organization of Forgotten Americans	.....	$284,863.00	$284,293.00	($570.00)	−0.2%
PA	Council of Three Rivers	.....	$898,825.00	$897,026.00	($1,799.00)	−0.2%
RI	Rhode Island Indian Council	.....	$608,182.00	$606,965.00	($1,217.00)	−0.2%
SC	South Carolina Indian Development Council, Inc.	.....	$236,031.00	$235,560.00	($471.00)	−0.2%
SD	Cheyenne River Sioux Tribe	477	$215,629.00	$215,198.00	($431.00)	−0.2%
SD	Lower Brule Sioux Tribe	.....	$54,221.00	$54,112.00	($109.00)	−0.2%
SD	Oglala Sioux Tribe	.....	$638,927.00	$637,650.00	($1,277.00)	−0.2%
SD	Rosebud Sioux Tribe	477	$470,403.00	$469,462.00	($941.00)	−0.2%
SD	Sisseton-Wahpeton Sioux Tribe	477	$119,992.00	$119,752.00	($240.00)	−0.2%
SD	United Sioux Tribe Development Corp.	.....	$544,699.00	$543,610.00	($1,089.00)	−0.2%
SD	Yankton Sioux Tribe	.....	$104,221.00	$104,013.00	($208.00)	−0.2%
TN	Native American Indian Association, Inc.	.....	$223,014.00	$222,568.00	($446.00)	−0.2%
TX	Alabama-Coushatta Indian Tribal Council	.....	$846,909.00	$845,216.00	($1,693.00)	−0.2%
TX	Dallas Inter-Tribal Center	.....	$373,632.00	$372,884.00	($748.00)	−0.2%
TX	Ysleta del Sur Pueblo	.....	$627,062.00	$625,808.00	($1,254.00)	−0.2%
UT	Indian Training & Education Center	.....	$343,473.00	$342,786.00	($687.00)	−0.2%
UT	Ute Indian Tribe	.....	$114,220.00	$113,992.00	($228.00)	−0.2%
VT	Abenaki Self-Help Association	.....	$78,120.00	$77,963.00	($157.00)	−0.2%
VA	Mattaponi Pamunkey Monacan Consortium	.....	$242,655.00	$242,171.00	($484.00)	−0.2%
WA	American Indian Community Center	.....	$389,539.00	$388,760.00	($779.00)	−0.2%
WA	Colville Confederated Tribes	477	$176,550.00	$176,197.00	($353.00)	−0.2%
WA	Confederated Tribes & Bands of the Yakama Nation	.....	$195,145.00	$194,755.00	($390.00)	−0.2%
WA	Lummi Indian Business Council	.....	$107,864.00	$107,648.00	($216.00	−0.2%
WA	Makah Tribal Council	477	$33,049.00	$32,983.00	($66.00)	−0.2%
WA	Puyallup Tribe of Indians	.....	$126,252.00	$126,000.00	$252.00	−0.2%
WA	Spokane Reservation	477	$38,655.00	$38,578.00	($77.00)	−0.2%
WA	The Tulalip Tribes	477	$42,820.00	$42,735.00	($85.00)	−0.2%
WA	United Indians for All Tribes Foundation	.....	$275,767.00	$275,215.00	($552.00)	−0.2%
WA	Western WA Indian Employment and Training Program.	.....	$609,148.00	$607,931.00	($1,217.00)	−0.2%
WI	Ho-Chunk Nation	477	$169,477.00	$169,138.00	($339.00)	−0.2%
WI	Lac Courte Oreilles Tribal Governing Board	.....	$82,295.00	$82,131.00	($164.00)	−0.2%
WI	Lac Du Flambeau Band of Lake Superior Chippewa	.....	$40,769.00	$40,688.00	($81.00)	−0.2%
WI	Menominee Indian Tribe of Wisconsin	477	$95,159.00	$94,969.00	($190.00)	−0.2%
WI	Oneida Tribe of Indians of WI, Inc.	.....	$159,004.00	$158,686.00	($318.00)	−0.2%
WI	Spotted Eagle, Inc.	.....	$210,100.00	$209,679.00	($421.00)	−0.2%
WI	Stockbridge-Munsee Community	477	$53,706.00	$53,599.00	($107.00)	−0.2%
WI	Wisconsin Indian Consortium	.....	$82,439.00	$82,274.00	($165.00)	−0.2%
WY	Eastern Shoshone Tribe	477	$124,965.00	$124,715.00	($250.00)	−0.2%
WY	Northern Arapaho Business Council	.....	$212,482.00	$212,057.00	($425.00)	−0.2%

[FR Doc. 2011–14138 Filed 6–7–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Extension of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 44 U.S.C. 3506(c)(2)(A). This program helps ensure that requested data is provided in the desired format, that the reporting burden (time and financial resources) is minimized, that the collection instruments are clearly understood, and that the impact of collection requirements on respondents is properly assessed. Currently, the Office of Federal Contract Compliance Programs is soliciting comments on its proposal to extend the Office of Management and Budget (OMB) approval of the Construction Information Collection. You can obtain a copy of the proposed information collection request by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the Office of Federal Contract Compliance Programs at the addresses listed in section below on or before August 8, 2011.

ADDRESSES: You may submit comments, identified by Control Number 1250–0001, by either one of the following methods:

Electronic comments: Through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the instructions for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue, NW., Room C–3325, Washington, DC 20210. *Telephone:* (202) 693–0103 (voice) or (202) 693–1337 (TTY).

Instructions: Please submit one copy of your comments by only one method. All submissions must include the agency's name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, we strongly encourage commenters to transmit their comments electronically via the *regulations.gov* Web site or to submit them by mail early. Comments, including any personal information provided, become a matter of public record and will be posted to the *regulations.gov* Web site. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Debra A. Carr, Director, Division of Policy, Planning and Program Development, Office of Federal Contract Compliance Programs, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. *Telephone:* (202) 693–0103 (voice) or (202) 693–1337 (TTY) (these are not toll-free numbers). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693–0103 (not a toll-free number). TTY/TDD callers may call (202) 693–1337 (not a toll-free number) to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Contractor Compliance Programs (OFCCP) administers three nondiscrimination and equal employment opportunity laws:

- Executive Order 11246, as amended (EO 11246);
- Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (referred to as Section 503); and
- The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (referred to as Section 4212 or VEVRAA).

These authorities prohibit employment discrimination but also require affirmative action to ensure that equal employment opportunities are available regardless of race, sex, color, national origin, religion, or status as an individual with a disability or protected veteran by Federal contractors. For purposes of this clearance, OFCCP is dividing its responsibilities under these authorities into categories: (1) Construction and (2) non-construction (supply and service). This clearance request covers the EO 11246 construction aspects of our program. To view the current construction Information Collection, go to *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201003–1250–001.* A separate Information Collection Request (ICR), approved by the Office of Management and Budget (OMB) under OMB No. 1250–0003 (formerly 1215–0072), covers the supply and service aspects of these programs.

EO 11246 prohibits Federal contractors from discriminating against applicants and employees on the basis of race, color, religion, sex, or national origin. The EO 11246 applies to Federal contractors and subcontractors and to federally assisted construction contractors and subcontractors holding a Government contract of $10,000 or more, or Government contracts which have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. The EO 11246 also applies to government bills of lading, depositories of Federal funds in any amount, and to financial institutions that are issuing and paying agents for U.S. Savings Bonds.

Section 503 prohibits employment discrimination against any employee or applicant for employment because of physical or mental disability and requires affirmative action to ensure that persons are treated without regard to either of these prohibited factors. Section 503 applies to Federal contractors and subcontractors with a contract in excess of $10,000. Because some construction contractors and subcontractors may be subject to the Affirmative Action Program (AAP) requirements of 41 CFR 60–741.40, the associated burden hours have been included in the Information Collection Requirement (ICR).

The affirmative action provisions of Section 4212 prohibit employment discrimination against any protected veteran. For contracts of $25,000 or more entered into or modified prior to December 1, 2003, the affirmative action provisions of Section 4212 prohibit employment discrimination against special disabled veterans, Vietnam era veterans, recently separated veterans, and other protected veterans. For contracts of $100,000 or more entered into or modified after December 1, 2003, the affirmative action provisions of Section 4212 prohibit employment discrimination against disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and other protected veterans. Because some construction contractors and subcontractors may be subject to the Affirmative Action Program (AAP) requirements of 41 CFR 60–250.40 and 41 CFR 60–300.40, the associated burden hours have been included in the Information Collection Requirement (ICR).

The ICR addresses recordkeeping and reporting for compliance with EO 11246, Section 503, and Section 4212 for the construction aspects of our program which are subject to the Paperwork Reduction Act of 1995 (PRA).

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the compliance and enforcement functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions

The DOL seeks the approval of the revision of this information in order to carry out its responsibility to enforce the anti-discrimination and affirmative action provisions of the three legal authorities it administers.

Type of Review: Extension.

Agency: Office of Federal Contract Compliance Programs.

Title: Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1250–0001.

Agency Number: None.

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

Total Respondents: 75,696.

Total Annual Responses: 75,696.

Average Time per Response, Recordkeeping (approximation due to rounding): 17.6 hours.

Average Time per Response, Reporting (approximation due to rounding): 0.01 hours.

Affirmative Action Program, Initial Development: 19,908 hours.

Affirmative Action Program, Annual Update: 74,692 hours.

Total Burden Hours, Recordkeeping and Reporting: 1,331,803.

Frequency: Annually.

Total Burden Cost (capital/startup): $48,378,542.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 1, 2011.

Debra A. Carr,

Director, Division of Policy, Planning and Program Development. Office of Federal Contract Compliance Programs.

[FR Doc. 2011–14051 Filed 6–7–11; 8:45 am]

BILLING CODE 4510–45–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of June 6, 13, 20, 27, July 4, 11, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 6, 2011

Monday, June 6, 2011

9:55 a.m.

Affirmation Session (Public Meeting) (Tentative) *EnergySolutions* (Radioactive Waste Import/Export)—EnergySolutions' Applications for Low-Level Radioactive Waste Import and Export Licenses (Tentative).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

10:00 a.m.

Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Wednesday, June 15, 2011

9:30 a.m.

Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (Contact: Nathan Sanfilippo, 301–415–3951).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 20, 2011—Tentative

There are no meetings scheduled for the week of June 20, 2011.

Week of June 27, 2011—Tentative

There are no meetings scheduled for the week of June 27, 2011.

Week of July 4, 2011—Tentative

There are no meetings scheduled for the week of July 4, 2011.

Week of July 11, 2011—Tentative

Tuesday, July 12, 2011

9:30 a.m.

Briefing on the NRC Actions for Addressing the Integrated Regulatory Review Service (IRRS) Report (Public Meeting) (Contact: Jon Hopkins, 301–415–3027).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at william.dosch@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to darlene.wright@nrc.gov.

Dated: June 2, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–14259 Filed 6–6–11; 11:15 am]

BILLING CODE 7590–01–P

PEACE CORPS

Notice of Request for a Revision of a Currently Approved Information Collection and Request for a New OMB Control Number.

ACTION: 30-day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the following information collection requests to the Office of Management and Budget (OMB) for Revision of a currently approved information collection. In compliance with the Paperwork Reduction Act of 1995 (44 USC Chapter 35), the Peace Corps invites the general public to comment on the extension, with change, of currently approved information collection, Peace Corps Volunter Medical Application Health Status Review (OMB 0420–0510) which consist of three forms: The Health Status Review form (PC 1789); the Report of Medical Exam (PC 1790 S); and, Dental Exam (PC 1790). The Peace Corps wants to remove the Dental Exam (PC 1790) from OMB 0420–0510 and request a new OMB Control Number for Dental Exam (PC 1790). This process is conducted in accordance with 5 CFR 1320.10.

DATES: Comments regarding this collection must be received on or before July 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@mailto:ddunevant@peacecorps.govpeacecorps.gov.* Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION:

Title: Peace Corps Volunter Medical Application Health Status Review which consist of three forms: The Health Status Review form (PC 1789); the Report of Medical Exam (PC 1790 S); and, the Dental Exam (PC 1790).

OMB Control Number: 0420–0510.

Type of Request: Revision of a currently approved information collection. Peace Corps seeks to remove the Dental Exam (PC 1790) from this collection.

Respondents: Potential and current volunteers.

Burden to the Public:

	Health Status Review (PC 1789)	Report of Medical Evaluation (PC 1790 S)	Report of Dental Evaluation (PC 1790)
a. Estimated number of respondents	9,700	5,000	5,000.
b. Estimated average burden per response	45 minutes	45 minutes	45 minutes.
c. Frequency of response	one time	one time	one time.
d. Annual reporting burden	7,275 hours	3,750 hours	3,750 hours.
e. Estimated annual cost to respondents	$175,546	$90,488	$90,488.

Needs and Uses: The information collected is required for consideration for Peace Corps Volunteer service. The Health Status Review is used to review the medical history of individual applicants. The Report of Medical Exam and the Report of Dental Exam are used by the examining physician and dentist both for applicants and for currently serving Volunteers. The results of these examinations are used to ensure that applicants for Volunteer service will, with reasonable accommodation, be able to serve in the Peace Corps without jeopardizing their health.

This notice is issued in Washington, DC on May 31, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–14222 Filed 6–7–11; 8:45 am]

BILLING CODE 6051–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATE AND TIME: Tuesday, June 21, 2011, at 10 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, June 21, at 10 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2011–14244 Filed 6–6–11; 11:15 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 236; OMB Control No. 3235–0095; SEC File No. 270–118.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 236 (17 CFR 230.236) under the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77a *et seq.*) requires issuers relying on an exemption from the Securities Act registration requirements for the public offering of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction, to furnish to the Commission specified information at least 10 days prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. Approximately 10 respondents file the information required by Rule 236 at an estimated 1.5 hours per response for a total of 15 annual burden hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14128 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulation S–T, OMB Control No. 3235–424, SEC File No. 270–375.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–T (17 CFR 232.10 through 232.903) sets forth the filing requirements relating to the electronic submission of documents on the Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system. Regulation S–T is assigned one burden hour for

administrative convenience because it does not directly impose any information collection requirements.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an *e-mail to: PRA_Mailbox@sec.gov.*

Dated: June 3, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14127 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29689; 812–13851]

Altegris Advisors, L.L.C. and Northern Lights Fund Trust; Notice of Application

June 1, 2011.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: Altegris Advisors, L.L.C. (the "Adviser") and Northern Lights Fund Trust (the "Trust").

DATES: Filing Dates: The application was filed on December 8, 2010, and amended on April 12, 2011, and May 19, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 27, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* Adviser, 1200 Prospect Street, Suite 550, La Jolla, CA 92037; *Trust:* 4020 South 147th Street, Omaha, NE 68137.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at http://www.sec.gov/search/search.htm or by calling (202) 551–8090.

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and comprises approximately ninety series, including the Altegris Managed Futures Strategy Fund (the "MF Fund") and the Altegris Macro Strategy Fund (the "MS Fund"). The MF Fund currently employs one unaffiliated investment subadviser (a "Subadviser") and the MS Fund employs one Subadviser.[1] The Adviser is a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and serves as the investment adviser to the MF Fund and the MS Fund pursuant to investment advisory agreements ("Advisory Agreements") with the Trust. The Adviser will also serve as the investment adviser to the other Funds. The Advisory Agreements were approved by the Trust's board of trustees (together with the board of directors or trustees of any other Fund, the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser ("Independent Trustees") and by the initial shareholder of the MF Fund and the MS Fund.

2. Under the terms of the Advisory Agreements, the Adviser is responsible for the overall management of the business affairs of the MF Fund and the MS Fund and selecting those Funds' investments in accordance with the Funds' respective investment objectives, policies and restrictions. For the investment management services that it provides to those Funds, the Adviser receives the fee specified in the Advisory Agreements. The Advisory Agreements also permit the Adviser to retain one or more subadvisers for the purpose of managing the investments of the MF Fund and the MS Fund. Pursuant to this authority, the Adviser has entered into investment subadvisory agreements with one Subadviser to provide investment advisory services to the MF Fund and with another Subadviser to provide investment advisory service to the MS Fund (such agreements with Subadvisers, "Subadvisory Agreements"). Each Subadviser is and each future Subadviser will be registered as an investment adviser under the Advisers Act. The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving

[1] Applicants also request relief with respect to existing and future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser; (b) uses the manager of managers structure ("Manager of Managers Structure") described in the application; and (c) complies with the terms and conditions of the application (together with the MF Fund and the MS Fund, the "Funds" and each, individually, a "Fund.") The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an applicant. The MF Fund and the MS Fund are the only Funds that currently intend to rely on the requested order. If the name of any Fund contains the name of a Subadviser, the name of the Adviser will precede the name of the Subadviser.

as a subadviser to one or more of the Funds ("Affiliated Subadviser").

Applicants' Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, each Fund will provide shareholders within 90 days of the hiring of a new Subadviser an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14063 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]:

In The Matter of: Artfest International, Inc; Order of Suspension of Trading

JUNE 6, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Artfest International, Inc. ("Artfest") because of questions regarding the accuracy and adequacy of assertions by Artfest, in its 2010 Form 10–K and amended Form 10–K filed with the Commission, concerning, among other things, an independent audit of Artfest's financial statements for the fiscal year ended December 31, 2010, which was not performed, and financial statements for the 2010 period that are referenced in the filings as "audited," when they were not.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, It Is Ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is

suspended for the period from 9:30 a.m. EDT on Monday, June 6, 2011 and terminating at 11:59 p.m. E.D.T. on Friday, June 17, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–14285 Filed 6–6–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64584; File No. SR–Phlx–2011–69]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Conform Exchange Rules

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 25, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule and Exchange Rules 99, 274, 279, 501, 507, 510, 640, 722, 985, 1033, 1092, 1001A, 1047A, 3201, 3211, 3228, 3312, 3404 and 3405 to conform the text of the Fee Schedule and Rules to a rule change that was recently approved by the Commission.[3]

The text of the proposed rule change is available on the Exchange's *Web site* at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform the Exchange's Fee Schedule and/or text of various Rules, as applicable, to utilize language consistently throughout the Rulebook. The Exchange recently filed a rule change, to among other things, change the name of the Exchange's Board from a "Board of Governors" to a "Board of Directors", eliminate references to foreign currency option participations, and capitalize all uses of the word "rule" where that word referred to an Exchange Rule.[4]

The Exchange proposes to amend the Fee Schedule and/or text of various Rules, as applicable, to change references to a Board of Governors to a Board of Directors and remove all references to foreign currency options participations and participants. In addition, the Exchange proposes to amend the Routing Fees in the Fee Schedule to reorder the Routing Fees, specifically to move C2 after CBOE for ease of reference.

Additionally, the Exchange proposes to amend Rules 99, 274, 279, 501, 507, 510, 640, 722, 985, 1033, 1092, 1001A, 1047A, 3201, 3211, 3228, 3312, 3404 and 3405 to capitalize all uses of the word "rule" where that word referred to an Exchange Rule. The Exchange inadvertently did not amend the Rule references in the prior filing.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by conforming the language in the Exchange's Fee Schedule and Rules so that it is consistent throughout. The Exchange believes that these amendments will clarify the Exchange's Rules (including the Fee Schedule) to the benefit of the membership. The Exchange believes that making the rules consistent will eliminate confusion with respect to the various references it is amending.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(1)[9] thereunder, the Exchange has designated this proposal as one that constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the SRO, and therefore has become effective.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 12180 (March 4, 2011) (SR–Phlx–2011–13).

[4] *Id.*

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–69 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–Phlx–2011–69. 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 Internet *Web site* (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for *Web site* viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–69 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14035 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64594; File No. SR–Phlx–2011–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Relating to the Appeal Fee

June 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule to eliminate the Appeal Fee for appeals to the Board of Directors. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to eliminate the Appeal Fee for appeals to the Board of Directors ("Appeal Fee"), in Section VI of the Exchange's Fee Schedule entitled "Access Service, Cancellation, Membership, Regulatory and Other Fees." The Exchange believes that recent amendments to the By-Laws and Rules render this Appeal Fee inapplicable.

Currently, the Exchange assesses a $250 Appeal Fee for an appeal from a decision of a Standing Committee, with the exception of appeals from a decision of the Business Conduct Committee, Hearing Panels, Nominating Committee or Member Nominating Committee, to the Board of Directors.[3] In January 2007, when the Appeal Fee became effective, the Exchange noted that By-Law Article XI, Section 11–1 entitled "Appeals," provided for appeals from decisions of Standing Committees to the Board.[4]

Since that time, the Exchange has amended its By-Laws to: (i) Eliminate the Admissions Committee and Options Allocation, Evaluation and Securities Committee; (ii) consolidate the Options Committee and the Foreign Currency Options Committee into the Quality of Markets Committee; and (iii) eliminate By-Law Article XI, Section 11–1 relating to appeals from Standing Committees.[5] The Appeal Fee is not applicable to the Business Conduct Committee, Nominating Committee and Member Nominating Committee. In addition, the Appeal Fee was originally filed to reduce frivolous appeals; such frivolous appeals are not an issue at this time.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal is reasonable because of the recent amendments to the Exchange's By-Laws, reduction in Standing Committees and reduction of frivolous claims. The Exchange also believes that its proposal is equitable because no member would be subject to an Appeal Fee.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Appeal Fee is refunded to appellant in the event the Board of Directors overturns the decision of the Standing Committee.

[4] *See* Securities Exchange Act Release No. 55071 (January 9, 2007), 72 FR 2078 (January 17, 2007) (SR–Phlx–2006–84).

[5] *See* Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23). *See also* Securities Exchange Act Release No. 64338 (April 25, 2011), 76 FR 24069 (April 29, 2011) (SR–Phlx-2011–13).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–76 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–Phlx-2011–76. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2011–76 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14130 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64593; File No. SR–NYSEArca-2011–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services to Introduce Two New Pricing Tiers, Investor Tier 1 and Investor Tier 2

June 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on June 1, 2011, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Schedule") to introduce two new pricing tiers, Investor Tier 1 and Investor Tier 2. The text of the proposed rule change is available at the Exchange's principal office, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective June 1, 2011, NYSE Arca proposes to introduce two new pricing tier levels, Investor Tier 1 and Investor Tier 2. Investor Tier 1 will allow customers to earn a credit of $0.0032 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities. Investor Tier 2 will allow customers to earn a credit of $0.0030 per share for executed orders that provide liquidity to the Book for Tape A, Tape B and Tape C securities. All other fees and credits will be at the existing tiered and basic rates based on the firms qualifying levels.

In order to qualify for the new Investor Tiers, customers must meet all of the following criteria on a monthly basis:

- Maintain a ratio of cancelled orders to total orders of less than 30%. In calculating this ratio, the Exchange will exclude Immediate-or-Cancel orders, which are liquidity removing in nature.

• Maintain a ratio of executed liquidity adding volume to total volume of greater than 80%.

• For Investor Tier 1, firms must add at least 35 million shares of liquidity per day on NYSE Arca to qualify. For Investor Tier 2, firms must add at least 10 million shares of liquidity per day but less than 35 million shares of liquidity per day on NYSE Arca to qualify. Trade activity on days when the market closes early is excluded from both Investor Tiers.

The goal of the Investor Tiers is to incentivize customers to maintain low cancellation rates and provide liquidity that supports the quality of price discovery and promotes market transparency. The tiers reward providers whose orders stay on the Book and do not rapidly cancel a large portion of their orders placed, which makes the price discovery process more efficient and results in higher fill rates, greater depth and lower volatility. It serves to encourage customers to post orders that are more likely to be executed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

NYSE Arca believes that the Investor Tiers are equitable and non-discriminatory because both are open to all customers on an equal basis and provide credits that are reasonably related to the value to an exchange's market quality associated with higher volumes. While the Investor Tiers distinguish among orders, such distinctions "are not designed to permit unfair discrimination" but rather intended to promote submission of liquidity providing orders to NYSE Arca, which would benefit all NYSE Arca members and all investors. Similarly, NASDAQ established an Investor Support Program ("ISP") targeting retail and institutional investor orders where firms receive a higher rebate if they meet all of the following criteria: (1) Add at least 10 million shares of liquidity per day via ISP-designated ports; (2) Maintain a ratio of orders-to-orders executed of less than 10 to 1 (counting only liquidity-providing orders and excluding certain order types) on ISP-designated ports; (3) Exceed the firm's August 2010 "baseline" volume of liquidity added across all the firm's ports or, if a firm does not have an August baseline, then the firm will be deemed to have added an average of 35 million shares per day as the baseline starting point to qualify for the higher rebate program.[5] In addition, by offering two Investor Tiers the Exchange believes more customers may provide the targeted order flow and more customers will be eligible to receive the credits for such orders.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEArca-2011–34 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–NYSEArca-2011–34. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] *See* Securities Exchange Act Release No. 63270 (November 8, 2010), 75 FR 69489 (November 12, 2012) [sic]; Securities Exchange Act Release No. 63414 (December 2, 2010), 75 FR 76505 (December 28, 2010).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b-4(f)(2).

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2011–34 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14129 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64592; File No. SR–CBOE–2011–051]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend CBOE Stock Exchange Transaction Fees to Change the Maker/Taker Fee to a Flat Fee

June 3, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 26, 2011, the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Stock Exchange ("CBSX") transaction fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Currently, CBSX offers a somewhat complex set of transaction fees. CBSX follows a Maker-Taker model which involves rewarding those who provide liquidity by giving them rebates while charging a fee to those who remove liquidity. The Fees Schedule is further complicated by the existence of separate tiers of Taker rebates and Maker fees, depending on the specific security. Transactions in securities priced $1 or greater in one select group of stocks are subject to Maker fees of $0.0018 per share and Taker rebates of $0.0014 per share. Transactions in securities priced $1 or greater in a second select group of stocks are subject to Maker fees of $0.0009 per share and Taker rebates of $0.0006 per share. Transactions in securities priced $1 or greater for all other securities are subject to a $0.0001 per share fee. These different tiers were designed to attract trades in some specific classes based on the liquidity profiles of transactions in those classes. By charging differing Maker fees and offering Taker rebates in some classes, the Exchange intended to encourage trading in such classes pursuant to the different liquidity profiles.

CBSX now desires to simplify the transaction fee structure. As such, CBSX proposes to eliminate Maker fees and Taker rebates, and also the different tiers for select groups of stocks. Instead, the Exchange intends to implement a flat model for transaction fees that will apply to all securities. The Exchange proposes to charge a $0.0002 per share fee for both Makers and Takers for transactions in securities priced $1 or greater, and a fee of 0.02% of the dollar value of the transaction for transactions in securities priced less than $1. This simplified fee structure will allow investors to much more easily determine and measure the costs of trading on CBSX. The Exchange hopes to attract liquidity and believes that investors will be enticed by a fee structure that is simple and intuitive.

This filing is to become effective on June 1, 2011.

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(4)[4] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE Trading Permit Holders and other persons using Exchange facilities. Simplifying transaction fees is consistent with Section 6(b)(5)[5] of the Act in that it removes a currently-unnecessary impediment to a free and open market and protects investors by making it easier for them determine and track the costs of trading on CBSX.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (f)(2) of Rule 19b–4[7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

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–CBOE–2011–051 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–CBOE–2011–051. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2011–051 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14081 Filed 6–7–11; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64591; File No. SR–Phlx–2011–79]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Allow Qualified Exchange Members to Act as Off-Floor Option Specialists in One or More Options Classes

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on June 1, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Exchange Rule 501 (Specialist Appointment) and Rule 1020 (Registration and Functions of Options Specialists) to allow qualified Exchange members to act as off-floor option specialists in one or more options classes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend Exchange Rules 501 and 1020 to allow qualified Exchange members to act as off-floor option specialists in one or more options classes (known as "Remote Specialists").

a. Background

There are several types of market makers on the Exchange, including Registered Options Traders ("ROTs"),[3] Streaming Quote Traders ("SQTs"),[4] Remote Streaming Quote Traders ("RSQTs"),[5] and specialists.[6]

Specialists are Exchange members who are registered as options specialists pursuant to Rule 1020(a)[7]. Current subsection (a) States that specialists include qualified RSQTs approved by the Exchange pursuant to Rule 501 to function as off-floor Remote Specialists in one or more options; and that Remote Specialists have all the rights and obligations of an options specialist, unless Exchange rules provide otherwise.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade in options for his own account. *See* Rule 1014(b)(i).

[4] An SQT is an ROT who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Rule 1014(b)(ii)(A).

[5] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Rule 1014(b)(ii)(B).

[6] Rule 1014 also discusses other market makers including Directed SQTs and Directed RSQTs, which receive Directed Orders as defined in Rule 1080(l)(i)(A). Specialists may likewise receive Directed Orders.

[7] The performance of all specialists, including Remote Specialists, is evaluated pursuant to Rule 511.

[8] Following is a list of such rules, which are influenced by the fact that Remote Specialists do not have a physical floor presence. Rule 1014(g) indicates that Remote Specialists have priority that is coextensive with that of electronic market makers such as RSQTs. Options Floor Procedures Advice ("OFPA") B–3 indicates that Remote Specialists are exempted from the requirement that an ROT including a specialist trade a certain percentage of volume on the Exchange in person. Rule 501 indicates that, unlike on-floor specialists, Remote Specialists do not need to retain an assistant specialist or a back-up specialist unit. Commentary

Continued

Rule 1020 sets forth additional provisions that are specifically applicable to specialists. Subsection (b) of Rule 1020, for example, states that as a condition of a member being registered as a specialist in one or more options, it is understood that, in addition to the execution of orders entrusted to him in such options, a specialist is to engage in a course of dealings for his own account to assist in the maintenance insofar as reasonably practicable, of a fair and orderly market on the Exchange in such options. Subsection (c) states that a specialist or his member organization shall not effect on the Exchange purchases or sales of any option in which such specialist is registered, for any account in which he or his member organization is directly or indirectly interested, unless such dealings are reasonably necessary to permit such specialist to maintain a fair and orderly market.

Rule 501 generally deals with the process of applying for approval as a specialist that would be eligible to receive allocations of options issues. Current subsection (f) discusses how RSQTs on the Exchange may become Remote Specialists in one or more options, where the Remote Specialists do not have a physical presence on the trading floor of the Exchange and where the Exchange determines that it cannot allocate such options to a floor-based specialist. Subsection (f)(ii) states that Remote Specialists must be accessible to Exchange staff and members during all trading hours and must provide telephonic and/or electronic access to such specialists and/or associated staff at all times during trading hours. Subsection (f)(iii) states that Remote Specialists have all the rights and obligations of specialists, unless Exchange rules provide otherwise.

Until such time that the rule filing proposing Remote Specialists was approved this year,[9] all option classes and series listed on the Exchange had to have a floor-based specialist with a physical presence on the options floor.[10] The floor-based specialist system is historically based in the traditional open outcry auction market system that has trading crowds at physical trading posts on the floor and Floor Brokers [11] that represent orders on the floor on behalf of others ("auction market system" or "open outcry system"). The auction market system is necessary, and indeed invaluable, to certain types of market participants (*e.g.,* institutional traders and certain large-volume traders). The Exchange has developed, in parallel to the auction market system, an extensive electronic means to execute option orders.[12] As a result, the Exchange operates an options market that combines a traditional open outcry auction market trading floor with electronic trading.[13] In January 2011, the Commission approved the initial Remote Specialist filing in which the Exchange proposed to allow RSQTs to act as Remote Specialists that are not physically present on the trading floor, where a floor-based specialist was not willing to accept (or retain) allocation of an option.[14] The Exchange is expanding the Remote Specialist position by this filing.

The Exchange notes that this proposal is in no way meant to diminish the need for the physical options trading floor on the Exchange. To the contrary, the Exchange recognizes the value of a physical trading floor and confirms its need and importance to the market place while expanding, through this proposal, the ability for floor specialists to engage in remote market making.

b. *The Proposal*

The Exchange proposes to enhance the current Remote Specialist model so that all eligible ROTs on the Exchange [15] may function as Remote Specialists. The Exchange also proposes to eliminate the requirement that an option may be allocated to a Remote Specialist only to the extent that the option cannot be allocated to (or retained by) an on-floor specialist. Significantly, all of the key principles now applicable to Remote Specialists will continue in force with this proposal: (a) Remote Specialists would be subject to all of the obligations and privileges of floor-based specialists unless otherwise noted in Exchange rules; (b) Remote Specialists and on-floor specialists would have equivalent quoting requirements; [16] and (c) RSQTs approved to act as Remote Specialists would have heightened quoting obligations when acting as Remote Specialists in contrast to when acting as RSQTs.[17]

The Exchange believes that this proposal would significantly expand the universe of market participants that could assume the role of Remote Specialist. The Exchange also believes that allowing more eligible ROTs to assume the role of Remote Specialist would further ensure the listing, or continued listing, of options on the Exchange to its benefit and the benefit of traders on the Exchange, market participants, and the investing public.

In making the proposed changes, the Exchange would consolidate portions of the definition of Remote Specialist from current Rule 501(f) into proposed Rule 1020(a). This would clarify the function of these rules such that Rule 501 would deal predominantly with the Remote Specialist application process and Rule 1020 would deal with the definitional prerequisites of being a Remote Specialist.

The Exchange proposes the following specific changes to Rules 501 and 1020. First, the Exchange proposes to move the concept that a Remote Specialist may not have a physical presence on the Exchange floor from Rule 501(f) into Rule 1020(a)(ii). Proposed subsection (a)(ii) would state that a Remote

.01 to Rule 1014 indicates that, like RSQTs, Remote Specialist do not have an in-person trade execution requirement. OFPA E–1 indicates that, unlike specialists that must have a representative available on the floor for the thirty minutes before the opening and the thirty minutes after the close of trading and one hour after the preliminary trade reports are distributed, Remote Specialists must have a representative available via telephonic and/or electronic communication access.

[9] *See* Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR–Phlx–2010–145) (order approving proposal to establish Remote Specialist on Exchange under specified circumstances) (the "initial Remote Specialist filing").

[10] At least one exchange that uses a specialist system has allowed certain option series to trade without a designated lead market maker (specialist). *See* Securities Exchange Act Release No. 56001 (July 2, 2007), 72 FR 37557 (July 10, 2007) (SR–NYSEArca–2007–34) (order approving). And at least one exchange that does not have a specialist system has allowed options to be traded without any market maker. *See* Securities Exchange Act Release No. 61735 (March 18, 2010), 75 FR 14227 (March 24, 2010) (SR–NASDAQ–2010–007) (order approving).

[11] An Options Floor Broker is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business with the public in which event he may accept orders from public customers of the organization. *See* Rule 1060.

[12] *See* Rule 1080 regarding the Exchange's electronic order, trading, and execution system. *See also* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving the Exchange's enhanced electronic platform, XL II).

[13] The current Phlx market model combining open outcry and electronic trading is also used by other options exchanges, such as Chicago Board Options Exchange, Inc. ("CBOE"), NYSE Amex LLC ("NYSE Amex") and NYSE Arca, Inc. ("NYSE Arca"). Only electronic options trading is done on other exchanges, such as the International Securities Exchange, LLC ("ISE") and The NASDAQ Stock Market LLC ("NASDAQ").

[14] *See* Securities Exchange Act Release No. 63717 (January 14, 2011), 76 FR 4141 (January 24, 2011) (SR–Phlx–2010–145) (order approving proposal to establish Remote Specialists on the Exchange pursuant to Rules 501 and 1020).

[15] SQTs would not be eligible to be Remote Specialists because they can function only on the physical options trading floor of the Exchange.

[16] *See* Rule 1014(b)(ii)(D)(2).

[17] *See* Rule 1014(b)(ii)(D)(1).

Specialist is an options specialist in one or more classes that may not have a physical presence on an Exchange floor and is approved by the Exchange pursuant to Rule 501. The Exchange notes that this language is in conformity with the goal of allowing all eligible ROTs (and not only RSQTs) to be off-floor specialists.

Second, the Exchange proposes to move language regarding Remote Specialist rights and obligations from Rule 501(f) into Rule 1020(a)(iii). Proposed subsection (a)(iii) would state that a Remote Specialist has all the rights and obligations of an options specialist, unless Exchange rules provide otherwise.[18] At the same time, the current language in Rule 501(f) that a Remote Specialist does not need to have an assistant specialist or a back-up specialist unit, as required in subsections (b) and (d) of Rule 501 for traditional specialists, would remain in Rule 501.

Third, the Exchange proposes to move the concept that a Remote Specialist must be available during trading hours from Rule 501(f) into Rule 1020(a)(iv). Proposed subsection (a)(iv) would state that a Remote Specialist shall be accessible to Exchange staff and members during all trading hours for the product(s) allocated to such specialist and shall provide Exchange staff and members with telephonic and/or electronic communication access to such specialist and/or associated staff at all times during trading hours. This is compatible with the principal that all specialists must be available and reachable during trading hours.

Fourth, the Exchange clarifies subsection (f) of Rule 501and subsection (a) of Rule 1020 to indicate that RSQTs are no longer the only ROTs that may be Remote Specialists. Rather, the Exchange proposes to state in Rule 501(f) and Rule 1020(a) that options specialists currently operating from the Exchange's physical trading floor may likewise be Remote Specialists. This is crucial to the Exchange's goal of expanding the Remote Specialist position so that it is available to all qualified Exchange members and thereby serves to enhance the depth and liquidity of options traded on the Exchange.

Fifth, the Exchange proposes new subsection (a)(v) of Rule 1020 to state that a Remote Specialist may have a representative on the trading floor of the Exchange during trading hours (know as a "Designee"). The Designee of a Remote Specialist may represent the specialist in open outcry trades in a trading crowd, which would enable the Remote Specialist to priority, if any, to the extent of the open outcry trades.[19] A Remote Specialist would not be eligible to receive a participation entitlement with respect to orders represented by the Designee in open outcry.[20]

The Exchange proposes language in subsection (a)(v) of Rule 1020 to establish requirements for Designees. Specifically, proposed subsection (a)(v)(A) would state that a Designee is an individual who is approved by the Exchange for the time period specified by the Exchange to represent a Remote Specialist in its capacity as a Remote Specialist. Moreover, the Exchange may require specified supervision of a Designee and/or limit a Designee's authority to represent a Remote Specialist. Proposed subsection (a)(v)(B) would state that a Designee must be a member of the Exchange, an affiliate of the Remote Specialist, and a registered Remote Options Trader pursuant to the rules of the Exchange.[21] And subsection (a)(v)(C) would state that a Designee may not trade as a Market-Maker in securities allocated to the Remote Specialist unless the Designee is acting on behalf of the Remote Specialist in its capacity as a Remote Specialist.

The Exchange notes that its Remote Specialist Designee concept is similar to that of CBOE's off-floor Designated Market Maker ("DPM") Designee concept in CBOE Rules 8.81 and 8.83 Interpretations and Policies .01.

Sixth, the Exchange proposes to add the ability of the Exchange to evaluate whether a request of an on-floor specialist to operate as a Remote Specialist on a class-by-class basis is in the best interest of the Exchange. Specifically, proposed new subsection (f)(i) of Rule 501 would allow the Exchange to consider information that it believes will be of assistance in determining whether a current on-floor specialist may become a Remote Specialist. This information may include any one or more of the following: Performance, operational capacity of the Exchange or options specialist, efficiency, number and experience of personnel of the options specialist who will be performing functions related to the trading of the applicable securities, number of securities involved, number of ROTs and SQTs affected and trading volume of the securities. The Exchange notes that proposed subsection (f)(i) is verbatim, to the extent practicable, like the language of CBOE Rule 8.83 Interpretations and Policies .01, which discusses information that CBOE may consider when appointing an off-floor DPM.[22]

The Exchange notes further that its Remote Specialist concept as amended is similar to that of CBOE's off-floor DPM concept that was approved by the Commission more than four years ago and remains one of the principal market making classes on CBOE.[23] The Exchange believes that its Remote Specialist proposal is, from a competitive perspective, justified and proper. The proposal ensures the listing, or continued listing, of options on the Exchange and furthers its ability to compete effectively in the market place to the benefit of traders, market participants, and the investing public.

Finally, rule-based principles that are now applicable to Remote Specialists on the Exchange will continue to be applicable to Remote Specialists without change when this proposal is approved. The firm quoting (market making) obligations for market makers on Phlx will remain the same as set forth in Rule 1014 in subsection (b)(ii)(D)(2) for specialists and SQST that are acting as Remote Specialists, and in subsection (b)(ii)(D)(1) for SQTs and RSQTS when they are not acting as Remote Specialists.[24] Bid ask differentials will remain the same as forth in Rule 1012. Minimum increments will remain the same as set

[18] The language regarding rights and obligations of Remote Specialists also currently exists in Rule 1020(a), albeit in a different location.

[19] *See* Rule 1014(g).

[20] *See* Rule 1014(g)(v).

[21] However, the Exchange would have the discretion to permit an individual who is not affiliated with a Remote Specialist to act as a Designee for the Remote Specialist on an emergency basis, provided that the individual satisfies the other requirements of subparagraph (a)(v)(B) of this Rule.

[22] The Exchange intends to set up a defined area or post on the options floor that would enable market makers that have a physical floor presence (*e.g.,* Floor Brokers) to interact with Remote Specialist quotes and trades.

[23] *See* Securities Exchange Act Release No. 34–55531 (March 26, 2007) 72 FR 15736 (April 2, 2007) (SR–CBOE–2006–94) (order approving proposal that, among other things, established off-floor DPMs pursuant to CBOE Rule 8.83).

[24] In addition, subsection (b)(ii)(B) states that an RSQT must quote in the capacity of RSQT or Remote Specialist but not both. Thus, where an RSQT functions as a traditional RSQT and also as a Remote Specialist, if an RSQT is allocated two option classes as a Remote Specialist, in those two classes the Remote Specialist will have the very same quoting (market making) requirements that are currently applicable to all specialists, including continuous quoting obligations. In the remaining classes to which an RSQT is appointed, the RSQT will have the same quoting (market making) requirements that are applicable to all RSQTs. The RSQT will not be able to submit quotes or act as RSQT in the two allocated Remote Specialist classes.

forth in Rule 1034.[25] Information barriers will remain the same.[26] And, all specialists including Remote Specialists will be subject to the same specialist performance evaluation procedures set forth in Rule 511.

c. Surveillance

The Exchange has developed surveillance procedures for its electronic and auction markets that include Remote Specialists. The Exchange will use the surveillance procedures now in place to perform surveillance of Remote Specialists.

d. Conclusion

The Exchange believes that its proposal to allow eligible ROTs to act as off-floor Remote Specialists in one or more options classes would ensure the listing, or continued listing, of options on the Exchange to the benefit of traders, market participants, and public customers making hedging and trading decisions. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and to be in the public interest.

The Exchange notes that the Commission has approved proposals that allow competing options exchanges to have off-floor (remote) market makers that are similar in concept to the proposed Remote Specialists.[27] The Exchange does not believe that this filing raises any novel issues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [28] in general, and furthers the objectives of Section 6(b)(5) of the Act [29] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system by allowing, similarly to other options markets, eligible Remote Options Traders on the Exchange to function as off-floor Remote Specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange believes that the foregoing proposed rule change may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) [30] of the Act and Rule 19b–4(f)(6)(iii) thereunder [31] because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2011–79 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–Phlx–2011–79. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2011–79 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14080 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[25] Minimum increments for certain listing programs, such as the $.50 Program and the $1 Strike Program, are also discussed in Commentary .05 to Rule 1012.

[26] Commentary .06 to Rule 1014 states, for example, that RSQTs are required to maintain information barriers with affiliates that may act in a specialist or market maker capacity.

[27] *See* Securities Exchange Act Release No. 55531 (March 26, 2007), 72 FR 15736 (April 2, 2007) (SR–CBOE–2006–94) (order approving proposal to establish off-floor Designated Primary Market-Makers). *See also* Securities Exchange Act Release Nos. 57747 (April 30, 2008), 73 FR 25811 (May 7, 2008) (SR–CBOE–2008–49) (notice of filing and immediate effectiveness to establish off-floor Lead Market-Makers); 57568 (March 26, 2008), 73 FR 18016 (April 2, 2008) (SR–CBOE–2008–32 (notice of filing and immediate effectiveness to establish ability of off-floor Delegated Primary Market-Makers to operate in any options class traded on Hybrid); and 52827 (November 23, 2005), 70 FR 72139 (December 1, 2005) (SR–PCX–2005–56) (approval order establishing Lead Market Makers).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64589; File No. SR–Phlx–2011–74]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Permit the Listing of Series With $0.50 and $1 Strike Price Increments on Certain Options Used To Calculate Volatility Indexes

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 25, 2011, NASDAQ OMX PHLX LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and of strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b–4(f)(6)(iii).[4]

The text of the proposed rule change is available at the Exchange's principal office, at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* the Commission's Public Reference Room, and at the Commission's Web site at *http://www.sec.gov.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to add new Commentary .12 to Rule 1012 to permit the listing of strike prices in $0.50 intervals where the strike price is less than $75, and of strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes.

The proposal is based on a recently approved rule change by the Chicago Board Options Exchange ("CBOE").[5]

New Commentary .12 will permit the listing of strike prices in $0.50 intervals and $1.00 intervals within specified strike price ranges for option series used to calculate volatility indexes. Volatility indexes are calculated and disseminated by the CBOE, which also lists options on the resulting index.[6] At this time, the Exchange has no intention of listing volatility options or selecting options on any equity securities, Exchange-Traded Fund Shares, Trust Issued Receipts, Exchange Traded Notes, Index-Linked Securities, or indexes to be the basis of a volatility index.

To the extent that the CBOE or another exchange selects a multiply listed product as the basis of a volatility index, proposed Commentary .12 would permit the Exchange to list and compete in all series listed by the CBOE or another Exchange for purposes of calculating a volatility index.

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (OPRA) have the necessary systems capacity to handle the additional traffic associated with the listing of strike prices in $0.50 intervals where the strike price is less than $75, and strike prices in $1.00 intervals where the strike price is between $75 and $150 for option series used to calculate volatility indexes in securities selected by the CBOE or another exchange.

2. *Statutory Basis*

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to offer a full range of all available option series in a given class, including those selected by other exchanges to be the basis of a volatility index.

While this proposal may potentially generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is restricted to a limited number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is restricted to a limited number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

[5] *See* Securities Exchange Act Release No. 64189 (April 5, 2011), 76 FR 20066 (April 11, 2011) (SR–CBOE–008) (order granting approval). Other Exchanges have submitted similar proposals. *See also* Securities Exchange Act Release No.64325 (April 22, 2011), 76 FR 23632 (April 27, 2011) (SR–NYSEAmex–2011–26) (notice of filing and immediate effectiveness).

[6] For example, CBOE calculates the CBOE Gold ETF Volatility Index ("GVZ"), which is based on the VIX methodology applied to options on the SPDR Gold Trust ("GLD"). The current filing would permit $0.50 strike price intervals for GLD options where the strike price is $75 or less. The Exchange is currently permitted to list strike prices in $1 intervals for GLD options (where the strike price is $200 or less), as well as for other exchange-traded fund ("ETF") options. *See* Rule 1012, Commentary .05(a)(iv).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. *Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action*

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal should promote competition by allowing the Exchange, without undue delay, to list and trade option series that are trading on other options exchanges. Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. *Solicitation of Comments*

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx-2011–74 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–Phlx-2011–74. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx-2011–74 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14079 Filed 6–7–11; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64590; File No. SR–FINRA–2011–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities

June 2, 2011.

I. Introduction

On April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change related to FINRA's Trading Activity Fee ("TAF") for transactions in Covered Securities. The proposed rule change was published for comment in the **Federal Register** on May 3, 2011.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

FINRA's proposal would amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's TAF for transactions in Covered Securities that are exchange-registered equity securities. Covered Securities are defined in Section 1 of Schedule A to the FINRA By-Laws as: exchange-registered securities wherever executed (except debt securities that are not TRACE–Eligible Securities); OTC Equity Securities; security futures; TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction); and all municipal securities subject to Municipal Securities Rulemaking Board reporting requirements. The rules governing the TAF also include a list of exempt transactions.[4] The TAF, along with the Personnel Assessment and the Gross Income Assessment fees, are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[5]

The current TAF rate is $0.000075 per share for each sale of a Covered Security, with a maximum charge of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64353 (April 27, 2011), 76 FR 24942 ("Notice").

[4] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[5] *See* FINRA By-Laws, Schedule A, § 1(a).

$3.75 per trade. In the Notice, the Exchange stated that over 95% of TAF revenue is generated by transactions in Covered Securities that are equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets and, due to the substantial decrease in average daily share volumes since 2009, FINRA has experienced a commensurate substantial decline in revenue from the TAF. Accordingly, FINRA has proposed to increase the TAF rate for Covered Securities that are equity securities by $0.000015 per share, from $0.000075 per share to $0.000090 per share, with a corresponding increase to the per-transaction cap for Covered Securities that are equity securities from $3.75 to $4.50.[6] FINRA stated in the Notice that the TAF for covered securities that are equity securities rate has not been adjusted in over six years, and that the proposal is designed to "stabilize revenue flows necessary to support FINRA's regulatory mission."

FINRA proposes July 1, 2011 as the effective date of the adjusted TAF and will announce the effective date of the proposed rule change in a *Regulatory Notice.*

III. Discussion and Commission's Findings

After carefully considering the proposed rule change, the Commission finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(5) of the Act,[8] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. The Commission believes that the proposal is reasonably designed to secure adequate funding to support FINRA's regulatory duties.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–FINRA–2011–020), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14062 Filed 6–7–11; 8:45 am]

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[6] Because transactions in Covered Securities that are equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of Covered Securities.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–3(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64581; File No. SR–NYSEAmex–2011–35]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Fees Relating to the Sale of Trading Licenses

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on May 26, 2011, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees it charges for the issuance of trading licenses that are required in order to effect transactions on the floor of the Exchange or through any facility of the Exchange. The Exchange proposes to amend Rule 300—NYSE Amex Equities (Trading Licenses) to (i) Create a two-tiered pricing structure for the annual fee, under which the fee would continue to be $40,000 per license for the first two licenses held by a member organization but would be reduced to $25,000 per license for any additional trading licenses held by that member organization, (ii) provide a formula for proration of the annual fee during a calendar month in which a trading license has been in place for less than the full month and (iii) provide that the monthly installments of the annual fee be payable in arrears at the end of each month. These changes will become operational on June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.sec.gov*, and *http://www.nyse.com*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fees it charges for the issuance of trading licenses that are required in order to effect transactions on the floor of the Exchange or through any facility of the Exchange. As currently provided in Rule 300—NYSE Amex Equities (Trading Licenses), the price per trading license sold in each annual offering of such licenses is $40,000 or such other price as the Exchange may set per trading license.

The Exchange proposes to modify the structure of its annual fee for trading licenses by moving from a single price of $40,000 for all such licenses to a two-tiered pricing structure. Under the proposal, the annual fee would continue to be $40,000 per license for the first two trading licenses held by a member organization but would be reduced to $25,000 per license for any additional trading licenses held by that member organization.

Pursuant to Rule 300(e)—NYSE Amex Equities, a buyer of a trading license is required to pay the Exchange the trading license fee in equal monthly installments in advance over the period during which the trading license is in effect. The Exchange proposes to change its billing schedule so that the monthly installments are payable in arrears at the end of each month.

Finally, Rule 300(d)—NYSE Amex Equities provides that, following the annual offering and at any time thereafter during the following calendar year, the Exchange shall sell additional

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

trading licenses expiring at the end of the calendar year at a price of $44,000 [3] or such other price as the Exchange may set, but prorated to reflect the amount of time remaining in the year. For any such additional trading license that is in place for 15 calendar days or less in a calendar month, the Exchange proposes that the proration for that month will be computed based on a flat rate of $100 per day with no tier pricing involved. For any such additional trading license that is in place for 16 calendar days or more in a calendar month, the Exchange proposes that the proration for that month will be computed based on the number of days as applied to the full annual fee for the license for the applicable tier.

These changes will become operational on June 1, 2011. Licenses that are already in place will be billed monthly for the remainder of the year at the new tier rates beginning on that date, but there will be no retroactive adjustment for the period prior to June 1 for those trading licenses that qualify for the new $25,000 tier price. For the June 2011 billing, the Exchange will begin invoicing in arrears as discussed above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. Any member organization that holds more than two trading licenses will be able to benefit from the new $25,000 annual fee tier for the additional licenses. The ability to pay monthly installments of the annual fee in arrears instead of in advance, as presently required, should be beneficial to all member organizations that hold trading licenses.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [6] of the Act and subparagraph (f)(2) of Rule 19b–4 [7] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSEAmex–2011–35 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–NYSEAmex–2011–35. 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 Internet *Web site* (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for *Web site* viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEAmex–2011–35 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14033 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[3] The Exchange notes that the $44,000 figure shown in the rule text as the current price for trading licenses sold during a calendar year following the annual offering is erroneous. The correct figure is $40,000—the same current price as trading licenses sold during the preceding annual offering, prorated to reflect the amount of time remaining in the year.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64582; File No. SR–NYSE–2011–23]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange Price List

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 26, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the fees it charges for the issuance of trading licenses that are required in order to effect transactions on the floor of the Exchange or through any facility of the Exchange. The Exchange proposes to amend its 2011 Price List ("Price List") to (i) Create a two-tiered pricing structure for the annual fee, under which the fee would continue to be $40,000 per license for the first two licenses held by a member organization but would be reduced to $25,000 per license for any additional trading licenses held by that member organization, (ii) provide a formula for proration of the annual fee during a calendar month in which a trading license has been in place for less than the full month, (iii) eliminate the current $1,000 fee for approval of a new member, and (iv) eliminate the $1,000 trading license transfer fee. The Exchange also proposes to amend Exchange Rule 300 (Trading Licenses) to be consistent with these changes and also to provide that the monthly installments of the annual fee be payable in arrears at the end of each month. These changes will become operational on June 1, 2011. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.sec.gov,* and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify the fees it charges for the issuance of trading licenses that are required in order to effect transactions on the floor of the Exchange or through any facility of the Exchange. As currently provided in Exchange Rule 300 (Trading Licenses), the price per trading license sold in each annual offering of such licenses is established each year by the Exchange pursuant to a rule filing submitted to the Commission, and that price is published in the Exchange's Price List. The Exchange has previously established the trading license fee for calendar year 2011 at $40,000 per license, which is currently reflected in the Price List.

The Exchange proposes to modify the structure of its annual fee for trading licenses by moving from a single price for all such licenses to a two-tiered pricing structure. Under the proposal, the annual fee would continue to be $40,000 per license for the first two trading licenses held by a member organization but would be reduced to $25,000 per license for any additional trading licenses held by that member organization. The price of each of these two tiers would continue to be established each year by the Exchange pursuant to a rule filing submitted to the Commission, with the tier prices being published in the Price List.

Pursuant to Exchange Rule 300(e), a buyer of a trading license is required to pay the Exchange the trading license fee in equal monthly installments in advance over the period during which the trading license is in effect. The Exchange proposes to change its billing schedule so that the monthly installments are payable in arrears at the end of each month.

In addition, Exchange Rule 300(d) provides that, following the annual offering and at any time thereafter during the following calendar year, the Exchange shall sell additional trading licenses expiring at the end of the calendar year at the price set forth in the Price List, but prorated to reflect the amount of time remaining in the year. For any such additional trading license that is in place for 15 calendar days or less in a calendar month, the Exchange proposes that the proration for that month will be computed based on a flat rate of $100 per day with no tier pricing involved. For any such additional trading license that is in place for 16 calendar days or more in a calendar month, the Exchange proposes that the proration for that month will be computed based on the number of days as applied to the full annual fee for the license for the applicable tier.

Finally, the Exchange proposes to eliminate the current $1,000 fee provided for on the Price List for approval of a new member because it believes the annual fee adequately covers any costs related to such approval. The Exchange further proposes to eliminate the $1,000 trading license transfer fee provided for on the Price List. This fee has become obsolete due to the fact that trading licenses are no longer transferred; instead, they are purchased following expiration or termination pursuant to Exchange Rule 300.

In addition to the proposed changes to the Price List, the Exchange also proposes to amend Exchange Rule 300 to be consistent with these changes.

These changes will become operational on June 1, 2011. Licenses that are already in place will be billed monthly for the remainder of the year at the new tier rates beginning on that date, but there will be no retroactive adjustment for the period prior to June 1 for those trading licenses that qualify for the new $25,000 tier price. For the June 2011 billing, the Exchange will begin invoicing in arrears as discussed above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[3] in general, and Section 6(b)(4) of the Act,[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be subject to the same fee structure and access to the Exchange's market is offered on fair and non-discriminatory terms. Any member organization that holds more than two trading licenses will be able to benefit from the new $25,000 annual fee tier for the additional licenses. The ability to pay monthly installments of the annual fee in arrears instead of in advance, as presently required, should be beneficial to all member organizations that hold trading licenses.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NYSE–2011–23 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–NYSE–2011–23. 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 Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2011–23 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14036 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64586; File No. SR–EDGX–2011–16]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

June 2, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2011, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members[3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet *Web site* at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2011–15,[4] the Exchange filed for immediate effectiveness a rule filing to amend Rule 11.9 to introduce the SWPC routing strategy to Rule 11.9(b)(3)(q).

SWPC is a routing option under which an order checks the System for available shares and then is sent to only Protected Quotations and only for displayed size. To the extent that any portion of the order is unexecuted, the remainder is posted on the book at the order's limit price. The entire SWPC order will not be cancelled back to the User immediately if at the time of entry there is an insufficient share quantity in the SWPC order to fulfill the displayed size of all Protected Quotations. This routing option is similar to the strategies set forth in NASDAQ Rule 4758(a)(1)(A)(vi) ("NASDAQ's "MOPP" strategy) and BATS BZX/BYX Exchange,

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] *See* SR–EDGX–2011–15 (May 5, 2011).

Inc. ("BATS") Rule 11.13(a)(3)(D) ("Parallel T").[5]

Additionally, the Exchange proposes to add the SWPC routing strategy to Flag SW and assign it a fee of $0.0031 per share for removal of liquidity from all market centers except from the New York Stock Exchange (NYSE). For any orders that use the SWPC strategy that remove liquidity from the NYSE, the Exchange will continue to assign them a Flag D and charge a fee of $0.0023 per share. This is further clarified in footnote 8 to the EDGX fee schedule.

The Exchange proposes to implement this amendment to its fee schedule on May 27, 2011.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The fee of $0.0031 per share for the SWPC routing strategy is an equitable allocation of reasonable dues, fees, and other charges in that the SWPC routing strategy is limited in its interaction with other Member orders as it only executes to the extent a Member order is at the Protected Quotation. As a result, compared to other routing strategies that always sweep the EDGX book before routing out, such as ROBA (fee of $0.0025 per share), the SWPC fee is higher. Secondly, the fee is equitable when compared to other similar type strategies of EDGX's competitors. As noted in SR–EDGX–2011–15 (May 5, 2011), the SWPC routing strategy is based on Nasdaq's MOPP strategy and BATS Parallel T routing strategy.[8] Specifically, Nasdaq charges $0.0035 per share for the MOPP strategy and BATS charges $0.0033 per share for the Parallel T strategy. EDGX's rate is even more competitive than these. Finally, the SWPC routing strategy is similar in functionality to SWPA/SWPB, both of which are charged $0.0031 per share.[9] The lower fee charged for removing liquidity from the NYSE ($0.0023 per share) is consistent with the processing of similar routing strategies by EDGX's competitors. Secondly, of the major market centers, the NYSE fees for removing liquidity itself are lower, and EDGX is thus able to pass back such lower rates to its Members. The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and Rule 19b–4(f)(2)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2011–16 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–EDGX–2011–16. 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 Internet *Web site* (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for *Web site* viewing and printing in the Commission's Public Reference Room 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 principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2011–16 and should be submitted on or before June 29, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14037 Filed 6–7–11; 8:45 am]

BILLING CODE 8011–01–P

[5] *See, e.g.,* NASDAQ Rule 4758, BATS Rule 11.13(a)(3)(D).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See, e.g.,* NASDAQ Rule 4758 and BATS Rule 11.13.

[9] *See* Securities Exchange Act Release No. 63821, 76 FR 7607 (SR–EDGX–2011–02).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12607 and #12608]

Kansas Disaster # KS–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Kansas dated 05/27/2011.

Incident: Reading Tornadoes.

Incident Period: 05/21/2011.

Effective Date: 05/27/2011.

Physical Loan Application Deadline Date: 07/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/27/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Lyon.

Contiguous Counties:

Kansas: Chase, Coffey, Greenwood, Morris, Osage, Wabaunsee.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12607 C and for economic injury is 12608 0.

The State which received an EIDL Declaration # is Kansas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

May 27, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–14157 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12560 and # 12561]

Arkansas Disaster Number AR–00048

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–1975–DR), dated 05/02/2011.

Incident: Severe Storms, Tornadoes, and Associated Flooding.

Incident Period: 04/23/2011 and continuing.

Effective Date: 05/27/2011.

Physical Loan Application Deadline Date: 07/01/2011.

EIDL Loan Application Deadline Date: 02/02/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing AND Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Arkansas, dated 05/02/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Arkansas: Lee, Poinsett, St. Francis.

All other contiguous counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14159 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12611 and #12612]

Oklahoma Disaster # OK–00051

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA—1988—DR), dated 05/27/2011.

Incident: Severe Storms and Flooding.

Incident Period: 04/21/2011 through 04/28/2011.

Effective Date: 05/27/2011.

Physical Loan Application Deadline Date: 07/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/27/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/27/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Adair, Cherokee, Delaware, Haskell, Le Flore, Mcintosh, Muskogee, Okmulgee, Pittsburg, Sequoyah.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere:	3.250
Non-Profit Organizations Without Credit Available Elsewhere:	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere:	3.000

The number assigned to this disaster for physical damage is 12611B and for economic injury is 12612B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14160 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12556 and #12557]

Tennessee Disaster Number TN–00051

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1974–DR), dated 05/01/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/25/2011 through 04/28/2011.

Effective Date: 05/27/2011.

Physical Loan Application Deadline Date: 06/30/2011.

EIDL Loan Application Deadline Date: 02/01/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing AND Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Tennessee, dated 05/01/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Carroll, Crockett, Hardin, Henry, Madison.

Contiguous Counties: (Economic Injury Loans Only):

Tennessee: Benton, Chester, Decatur, Dyer, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Mcnairy, Stewart, Wayne, Weakley.

Alabama: Lauderdale.

Kentucky: Calloway, Graves.

Mississippi: Alcorn, Tishomingo.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14162 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12588 and # 12589]

Minnesota Disaster Number MN–00030

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1982–DR), dated 05/10/2011.

Incident: Severe Storms and Flooding.

Incident Period: 03/16/2011 through 05/25/2011.

Effective Date: 05/25/2011.

Physical Loan Application Deadline Date: 07/11/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 02/10/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 05/10/2011, is hereby amended to establish the incident period for this disaster as beginning 03/16/2011 and continuing through 05/25/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14115 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12558 and # 12559]

Tennessee; Disaster Number TN–00052

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Tennessee (FEMA–1974–DR), dated 05/01/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Associated Flooding.

Incident Period: 04/25/2011 through 04/28/2011.

Effective Date: 05/27/2011.

Physical Loan Application Deadline Date: 06/30/2011.

Economic Injury (Eidl) Loan Application Deadline Date: 02/01/2012.

ADDRESSES: *Submit completed loan applications to:* U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, Tx 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Tennessee, dated 05/01/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Benton, Bledsoe, Carroll, Chester, Cocke, Crockett, Fayette, Gibson, Hardeman, Hardin, Henderson, Henry, Johnson, Lake, Madison, Mcminn, Mcnairy, Monroe, Rhea, Shelby, Weakley.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14163 Filed 6–7–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7492]

30–Day Notice of Proposed Information Collections: ECA Sports & Culture Evaluation Surveys

ACTION: Notice of request for public comment and submission to OMB of proposed collections of information.

SUMMARY: The Department of State has submitted the following information collection requests to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Sports & Culture Evaluation, Between the Lines (BTL) Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's Between the Lines (BTL) Program exchange participants from 2008 through 2009.
- *Estimated Number of Respondents:* 31 annually.
- *Estimated Number of Responses:* 31 annually.
- *Average Hours per Response:* 35 minutes.
- *Total Estimated Burden:* 18 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, Sports Envoys Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's Sports Envoys Program envoy participants from 2005 through 2009.
- *Estimated Number of Respondents:* 28 annually.
- *Estimated Number of Responses:* 28 annually.
- *Average Hours per Response:* 20 minutes.
- *Total Estimated Burden:* 9 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, Kennedy Center (KC) Mentor Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's Kennedy Center (KC) Cultural Fellows Mentoring Program participants from 2005 through 2009.
- *Estimated Number of Respondents:* 30 annually.
- *Estimated Number of Responses:* 30 annually.
- *Average Hours per Response:* 35 minutes.
- *Total Estimated Burden:* 18 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, Sports Surveys.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's Sports Visitors Program and the International Sports Grants Initiative participants from 2008 through 2009.
- *Estimated Number of Respondents:* 247 annually (Sports Grants: 140, Sports Visitors: 107).
- *Estimated Number of Responses:* 247 annually (Sports Grants: 140, Sports Visitors: 107).
- *Average Hours per Response:* 35 minutes (Sports Grants: 35, Sports Visitors: 35).
- *Total Estimated Burden:* 144 hours annually (Sports Grants: 82, Sports Visitors: 62).
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, Kennedy Center (KC) Cultural Visitors Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's Kennedy Center (KC) Cultural Visitors Program participants from 2005 through 2009.
- *Estimated Number of Respondents:* 103 annually.
- *Estimated Number of Responses:* 103 annually.
- *Average Hours per Response:* 35 minutes.
- *Total Estimated Burden:* 60 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, International Visitor Leadership Program (IVLP) Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's International Visitor Leadership Program (IVLP) participants who were involved in selected cultural programs from 2000 through 2009.
- *Estimated Number of Respondents:* 855 annually.
- *Estimated Number of Responses:* 855 annually.
- *Average Hours per Response:* 35 minutes.
- *Total Estimated Burden:* 499 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.
- *Title of Information Collection:* Sports & Culture Evaluation, International Writing Program (IWP) Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* Survey numbers generated as needed.
- *Respondents:* ECA's International Writing Program (IWP), Fall Residency exchange program participants from 2005 through 2009.
- *Estimated Number of Respondents:* 112 annually.
- *Estimated Number of Responses:* 112 annually.
- *Average Hours per Response:* 35 minutes.
- *Total Estimated Burden:* 65 hours annually.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from June 8, 2011

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail:* *oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Michelle Hale, ECA/P/V, SA–5, C2 Floor, Department of State, Washington, DC 20522–0582, who may be reached on 202–632–6312 or at *HaleMJ2@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary to properly perform our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond,

Abstract of proposed collections: The Department of State is requesting new information collections to meet OMB and Congressional reporting requirements. These requests for new information collections will allow ECA/P/V, as part of their Sports and Culture Evaluation Program, to conduct surveys of exchange participants from various ECA programs. Collecting this data will help ECA/P/V assess and measure the effectiveness and impact of their programs, and provide valuable feedback from the participants' perspective.

• Sports & Culture Evaluation, Between the Lines (BTL) Survey: Respondents will be exchange participants who were involved in the BTL Program during 2008 and 2009.

• Sports & Culture Evaluation, Sports Envoys Survey: Respondents will be envoys who participated in the Sports Envoys Program between 2005 and 2009.

• Sports & Culture Evaluation, Kennedy Center (KC) Mentor Survey: Respondents will be exchange program participants who were involved in the KC Cultural Fellows Mentoring Program between 2005 and 2009.

• Sports & Culture Evaluation, Sports Surveys: Respondents will be exchange program participants who were involved in either the Sports Visitors Program or the International Sports Grants Initiative Program during 2008 and 2009.

• Sports & Culture Evaluation, Kennedy Center (KC) Cultural Visitors Survey: Respondents will be exchange program participants who were involved in the KC Cultural Visitors Program between 2005 and 2009.

• Sports & Culture Evaluation, International Visitor Leadership Program (IVLP) Survey: Respondents will be exchange program participants who were involved in IVLP programs that focused on cultural themes between 2000 and 2009.

• Sports & Culture Evaluation, International Writing Program (IWP) Survey: Respondents will be exchange program participants who were involved in the IWP programs between 2005 and 2009.

Methodology: All evaluation data will be collected through eight (8) electronic surveys conducted via Zoomerang, an on-line surveying tool.

Additional Information: These seven (7) information collections together represent the entire Sports and Culture Evaluation which will survey participants of eight (8) different ECA exchange programs that focus on either arts and culture, or sports related themes.

Dated: May 27, 2011.

Julianne Paunescu,

Acting Director of the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–14167 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7493]

60-Day Notice of Proposed Information Collection: DS–4131 Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area, 1405–0181

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

• *Title of Information Collection:* Advance Notification Form: Tourist and Other Non-Governmental Activities in the Antarctic Treaty Area.

• *OMB Control Number:* 1405–0181.

• *Type of Request:* Extension of a Currently Approved Collection.

• *Originating Office:* Bureau of Oceans and International Environmental and Scientific Affairs, Office of Ocean and Polar Affairs (OES/OPA).

• *Form Number:* DS–4131.

• *Respondents:* Operators of Antarctic expeditions organized in or proceeding from the United States.

• *Estimated Number of Respondents:* 22.

• *Estimated Number of Responses:* 22.

• *Average Hours per Response:* 10.5.

• *Total Estimated Burden:* 231.

• *Frequency:* On occasion.

• *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from June 8, 2011.

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

• E-mail: *FosterHD@state.gov*.

• *Mail (paper, disk, or CD–ROM submissions):* Harold D. Foster, Office of Ocean and Polar Affairs, Room 2665, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520.

• *Fax:* 202.647.9099.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Harold D. Foster, Office of Ocean and Polar Affairs, Room 2665, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. He may be reached on 202.647.0237 or at *fosterhd@state.gov*.

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Information solicited on the Advance Notification Form (DS–4131) provides the U.S. Government with information on tourist and other non-governmental expeditions to the Antarctic Treaty area. The U.S. Government needs this information to comply with Article VII(5)(a) of the Antarctic Treaty and comport with Antarctic Treaty Consultative Meeting Recommendation XVIII–1 and Resolution XIX–3.

Methodology: Information will be submitted in signed original by U.S. organizers of tourist and other non-governmental expeditions to Antarctica. Advance copies are submitted by e-mail.

Dated: May 31, 2011.

Evan T. Bloom,

Director, Office of Ocean and Polar Affairs, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

[FR Doc. 2011–14166 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7497]

60–Day Notice of Proposed Information Collection; Passport Demand Forecasting Study Phase III, 1405–0177

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Passport Demand Forecasting Study Phase III.
- OMB Control Number: OMB No. 1405–0177.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services Office: CA/PPT.
- *Form Number:* n/a.
- *Respondents:* A nationally representative sample of United States citizens and other categories of individuals entitled to a U.S. Passport.
- *Estimated Number of Respondents:* 4,000 respondents monthly per survey.
- *Estimated Number of Responses:* 48,000 annually.
- *Average Hours Per R*esponse: 10 minutes.
- *Total Estimated Burden:* 8,000 hours annually.
- *Frequency:* Monthly.
- *Obligation to Respond:* Voluntary.

DATE(S): The Department will accept comments from the public up to 60 days from June 8, 2011.

ADDRESSES: Direct comments and questions to Rachel Arndt. You may submit comments by any of the following methods:

- *E-mail: ArndtRM@state.gov.*
- Mail (paper, disk, or CD–ROM submissions): Rachel Arndt, 2100 Pennsylvania Ave., NW., SA–29, Room 3006, Washington, DC 20520.
- *Fax:* 202–736–9272.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Rachel Arndt, 2100 Pennsylvania Ave., NW,, SA–29, Room 3006, Washington, DC 20520, who may be reached on 202–663–2647 or at *ArndtRM@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

Section 7209 of the Intelligence Reform and Terrorism Prevention Act (IRTPA), enacted on December 17, 2004, requires the Secretary of the Department of Homeland Security (DHS), in consultation with the Secretary of State, to develop expeditiously, and implement a plan to require U.S. citizens and certain other categories of individuals to present a passport or sufficient documentation of the identity and citizenship when entering the U.S. This law has had significant effect on travel to Canada, Mexico, and the Caribbean.

CA/PPT has urgent and pressing data requirements and needs to obtain and regular statistical data on issues that focus on, and are related to, travel and passport applications that can be used to monitor, assess, and forecast passport demand on a continuous basis for the U.S. population including critical population segments near the Canadian and Mexican borders. In support of these efforts, CA/PPT plans to conduct monthly and incremental forecasts of passport demand nationally. This gathering of data will provide the opportunity to refine volume and timing estimates on demand, and will gauge public reaction to economic and socio-demographic changes.

Methodology

CA/PPT will conduct monthly panel studies that will be conducted using multiple methodologies. Methodologies can include telephone, Web/Internet, mail, and mixed mode surveys to ensure the survey reaches the appropriate audience and leverages the best research method to obtain responses given the survey topic and panel member preference. The panel data will cover an estimated 48,000 respondents and include variables covering passport, travel, and socio-demographic variables of interest to CA/PPT.

Date:June 2, 2011.

Barry J. Conway,

Acting Deputy Assistant Secretary, Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2011–14176 Filed 6–7–11; 8:45 am]

BILLING CODE 4170–06–P

DEPARTMENT OF STATE

[Public Notice 7496]

Culturally Significant Objects Imported for Exhibition Determinations; "Lyonel Feininger: At the Edge of the World"

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 "Lyonel Feininger: At the Edge of the World," 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 Whitney Museum of American Art, New York, New York, from on or about June 30, 2011, until on or about October 16, 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: June 1, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–14178 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7470]

Notice of Intent to Establish A Federal Advisory Committee

AGENCY: Department of State.

ACTION: Notice of intent to establish the Foreign Affairs Policy Board (FAPB).

Under the provisions of Public Law 92–463, Federal Advisory Committee Act, notice is hereby given that the Department intends to establish the Foreign Affairs Policy Board. The Department affirms that this advisory committee is necessary and in the public interest.

Nature and Purpose: The Foreign Affairs Policy Board will provide the Secretary of State, the Deputy Secretaries of State, and the Director of Policy Planning, independent, informed advice and opinions concerning matters of U.S. foreign policy. It will review and assess: (1) Global threats and opportunities; (2) trends that implicate core national security interests; (3) tools and capacities of the civilian foreign affairs agencies; (4) priorities and strategic frameworks for U.S. foreign policy; and (5) any other topics raised by the Secretary of State, the Deputy Secretaries of State, or the Director of Policy Planning. It will not perform the function of any existing Department staff or committee.

For further information about this advisory committee, please contact Kelly Wheeler at (202) 647–4697.

Dated: *June 1, 2011.*

Jake Sullivan,

Director, Policy Planning Staff U.S. Department of State.

[FR Doc. 2011–14173 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7471]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 3 p.m. to 5 p.m. on Monday, June 20, 2011, in room 1107 of the Harry S. Truman Building at the U.S. Department of State, 2201 C Street NW.,Washington, DC. The meeting will be hosted by the Assistant Secretary of State for Economic, Energy, and Business Affairs Jose W. Fernandez and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on issues relating to the advent of cloud computing as a new business model in international trade, the implications of this for multinational corporations, and the role of U.S. international policymaking in this arena. Subcommittee reports and discussions will be led by the Investment Subcommittee, the Economic Sanctions Subcommittee, and the Subcommittee on Women in International Economic Policy.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Thursday, June 16, their name, professional affiliation, valid government-issued ID number (*i.e.,* U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202)647–5936, e-mail (*Boothsl@state.gov*), or telephone (202) 647–0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U. S. Government identification card, or any valid passport. Enter the Department of State from the entrance on 23rd Street. In view of escorting requirements, non-Government attendees should plan to arrive 15 minutes before the meeting begins. Requests for reasonable accommodation should be made to Sherry Booth prior to Monday, June 13th. Requests made after that date will be considered, but might not be possible to fulfill.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA Patriot Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Privacy Impact Assessment for VACS–D at *http://www.state.gov/documents/organization/100305.pdf* for additional information.

For additional information, contact Deputy Outreach Coordinator Tiffany Enoch, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647–2231 or *EnochT@state.gov*.

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance requiring the ACIEP to hold this public meeting on June 20th, in that the ACIEP has been requested to provide input and information to another Department advisory committee, the Advisory Committee on International Communications and Information Policy, which is holding its public meeting on June 28th.

Dated: June 2, 2011.

Maryruth Coleman,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, U.S. Department of State.

[FR Doc. 2011–14154 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 7494]

Waiver of Restriction on Assistance to the Central Government of Tajikistan

Pursuant to Section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F,

Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of Section 7086(c)(1) of the Act with respect to Tajikistan and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: *May 26, 2011.*

Thomas Nides,

Deputy Secretary of State

for Management and Resources .

[FR Doc. 2011–14171 Filed 6–7–11; 8:45 am]

BILLING CODE 4710–46–P

Department of Transportation

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) During the Week Ending May 14, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0097.

Date Filed: May 12, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 2, 2011.

Description: Application of FAI rent-a-jet AG (also doing business as Flight Ambulance International) ("FAI") requesting an exemption and a foreign air carrier permit authorizing FAI to engage in charter foreign air transportation of persons, property, and mail to and from points in the United States to the full extent permitted by its homeland operating authority and the EU–U.S. open-skies agreement, as well as other charters. Specifically FAI requests issuance of an exemption and a foreign air carrier permit authorizing FAI to engage in the following: (i) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Union, via any point or points in any EU Member State and via intermediate points, to any point or points in the United States and beyond; (ii) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (iii) foreign charter air transportation of cargo between any point or points in the United States and any other point or points; (iv) other charters pursuant to the prior approval requirements set forth in the Department's regulations governing charters; and (v) charter transportation authorized by any additional route rights made available to European Union carriers in the future, to the extent permitted by FAI's homeland license on file with the Department.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison .

[FR Doc. 2011–14084 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–9XP

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending May 7, 2011

The following Agreements were filed with the Department of Transportation under 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–2011–0090.
Date Filed: May 5, 2011.
Parties: Members of the International Air Transport Association.
Subject: TC31 South West Pacific—TC1 (except Canada, USA). Composite Resolution 017c e-Tariffs, 4–22 April 2011 (Memo 1618). Intended Effective Date: 1 July 2011.

Docket Number: DOT–OST–2011–0091.
Date Filed: May 5, 2011.
Parties: Members of the International Air Transport Association.
Subject: TC31 South West Pacific—TC1 (except Canada, USA), Resolution 012p—Glossary of Termse-Tariffs, 4–22 April 2011 (Memo 0229). Intended Effective Date: 1 July 2011.

Docket Number: DOT–OST–2011–0094.
Date Filed: May 5, 2011.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 677—Resolution 010m, TC3 between South East Asia and Japan, Korea Special Passenger Amending Resolution between China (excluding Hong Kong SAR and Macao SAR) and Japan (Memo 1429). Intended Effective Date: 15 June 2011.

Docket Number: DOT–OST–2011–0095.
Date Filed: May 5, 2011.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 676, TC1 Caribbean, Longhaul, Within South America. Composite Resolutions e-Tariffs, 4–22 April 2011 (Memo 1620). Intended Effective Date: 1 July 2011.

Docket Number: DOT–OST–2011–0096.
Date Filed: May 5, 2011.
Parties: Members of the International Air Transport Association.*Subject:* Mail Vote 634, TC31 South Pacific South West Pacific—TC1, (except Canada, USA) Composite Resolution 011be-Tariffs 8–23. March 2010 (Memo 1613).

Intended Effective Date: for travel on/after 1 July 2011.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–14085 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2011–25]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 29, 2011.

ADDRESSES: You may send comments identified by Docket Number FAA–2011–0327 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide.

Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, (425–227–2127), Standardization Branch, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Fran Shaver, (202–267–4059), Office of Rulemaking, ARM–207, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 26, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2011–0327.

Petitioner: Embraer.

Section of 14 CFR Affected: § 25.813(e).

Description of Relief Sought: Embraer requests an exemption from § 25.813(e), Amendment 25–116, to allow the installation of interior doors between passenger's compartment and emergency exits in the EMB–550 airplane. Certain design features would be required to ensure that the door would not adversely affect safety.

[FR Doc. 2011–14144 Filed 6–8–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration and Federal Aviation Administration

Environmental Impact Statement: Cook and DuPage Counties, Illinois

AGENCIES: Federal Highway Administration (FHWA) and Federal Aviation Administration (FAA), DOT

ACTION: Notice of Intent to Prepare an Environmental Impact Statement

SUMMARY: The FHWA and FAA are issuing this notice to advise the public that a Tier Two Environmental Impact Statement will be prepared for the Elgin O'Hare—West Bypass in Cook and DuPage Counties, Illinois.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, *Phone:* (217) 492–4600. Jim Keefer, Manager, Chicago Airports District Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, *Phone:* (847) 294–7336. Diane M. O'Keefe, P.E., Deputy Director of Highways, Region One Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, *Phone:* (847) 705–4110.

SUPPLEMENTARY INFORMATION: The FHWA and FAA, in cooperation with the Illinois Department of Transportation (IDOT), will prepare a Tier Two Environmental Impact Statement (EIS) for the proposed Elgin O'Hare—West Bypass. The study area for the EIS is along the Elgin-O'Hare Expressway/Thorndale Avenue between Chicago O'Hare International Airport (O'Hare) and Lake Street/US Route 20, and on a proposed alignment connecting I–90 and I–294 along the west side of O'Hare. The Tier Two EIS will present further detail on the alternatives for the preferred transportation system concept that resulted from the Tier One EIS, an evaluation of the environmental impacts of the alternatives, and actions for mitigating project impacts to environmental resources.

The primary environmental resources that may be affected are: residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. This project is being developed using the Illinois Department of Transportation's Context Sensitive Solutions policy. Alternatives to be evaluated will include (1) taking no action and (2) complete transportation system alternatives for the Tier One corridor that include consideration of design options, financing options, construction sequencing options, and the inclusion of transit, bicycle and pedestrian facilities.

The Tier One Stakeholder Involvement Plan (SIP), which met the SAFETEA–LU Coordination Plan requirements, will be updated to ensure that a full range of issues related to Tier Two of this project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area. The Web site established for this project (*http://www.elginohare-westbypass.org*) is one element of the project public involvement program.

Comments or questions concerning this proposed action and the Tier Two EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. The Tier Two Draft EIS will be available for public and agency review after its publication. A public hearing will be held during the public comment period for the draft EIS. Public notice will be given of the time and place of public meetings and hearing. The Tier Two EIS will conclude with the selection of a preferred alternative documented in the Record of Decision.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

James G. Keefer,

Manager, Chicago Airports District Office, Federal Aviation Administration, Des Plaines, Illinois.

Issued on: May 26, 2011.

Norman R. Stoner,

Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2011–14207 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Will and Kankakee Counties, Illinois and Lake County, IN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier One Environmental Impact Statement will be prepared for the Illiana Corridor Project in Will and Kankakee Counties, Illinois and Lake County, Indiana.

FOR FURTHER INFORMATION CONTACT: Norman R. Stoner, P.E., Division Administrator, Federal Highway Administration, 3250 Executive Park Drive, Springfield, Illinois 62703, Phone: (217) 492–4600. Diane M. O'Keefe, P.E., Deputy Director of Highways, Region One Engineer, Illinois Department of Transportation, 201 West Center Court, Schaumburg, Illinois 60196, Phone: (847) 705–4000. Jim Stark, Deputy Commissioner for Capital

Program Management, Indiana Department of Transportation, 100 North Senate Avenue, N758, Indianapolis, IN 46204, Phone: (317) 232–0694.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Illinois Department of Transportation (IDOT) and the Indiana Department of Transportation (INDOT), will prepare a Tier One Environmental Impact Statement (EIS) for the Illiana Corridor Project. The anticipated project termini are Interstate Highway 55 in Will County, Illinois and Interstate Highway 65 in Lake County, Indiana. The study area covers approximately 950 square miles in portions of Will and Kankakee counties in Illinois and Lake County in Indiana.

The Tier One EIS will complete a broad analysis of transportation system alternative(s) in the study area and evaluate the environmental impacts at a planning level of detail using a Geographic Information System (GIS) supplemented as needed by field investigations. The primary environmental resources that may be affected are: agricultural, residential, commercial, and industrial properties; streams and floodplains; wetlands; and open space. Alternatives assessed will seek to avoid and minimize impacts to these resources, as well as cultural resources and protected lands. In accordance with FHWA, IDOT, and INDOT policies, the project is being developed using Context Sensitive Solutions as the basis for an extensive stakeholder outreach program.

A range of Alternatives will be developed and evaluated, including but not limited to: Taking no action, transportation system management strategies, existing or new transit improvements, existing roadway improvements, and new roadways on new location.

As part of the EIS process, a scoping meeting for obtaining input from Resource Agencies in both Illinois and Indiana on the level of detail and methodologies to be used in the EIS, as well as the development of a bi-state agency coordination process, will be held on June 28, 2011 at the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois.

A Stakeholder Involvement Plan (SIP), which will meet the SAFETEA–LU Coordination Plan requirements, will be developed to ensure that a full range of issues related to this proposed project are identified and addressed. The SIP provides meaningful opportunities for all stakeholders to participate in defining transportation issues and solutions for the study area.

Comments or questions concerning this proposed action and the Tier One EIS are invited from all interested parties and should be directed to the FHWA at the address provided above. A public hearing will be held after the Tier One Draft EIS is published and made available for public and agency review. Public notice will be given of the time and place of public meetings and hearings.

The Tier One EIS will conclude with a Record of Decision selecting a preferred corridor that can encompass one or more transportation alternatives. Following the Tier One EIS, projects with independent utility may be advanced to Tier Two NEPA documents that will focus on detailed environmental analyses.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: May 26, 2011.

Norman R. Stoner,

Division Administrator, Federal Highway Administration, Springfield, Illinois.

[FR Doc. 2011–14205 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0070]

Tesla Motors, Inc.; Receipt of Petition for Renewal of Temporary Exemption from the Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of receipt of a petition for renewal of a temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Tesla Motors, Inc., has petitioned the agency for renewal of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that the petitioner avers that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.[1] This notice of receipt of an application for renewal of temporary exemptions is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than July 8, 2011.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on "Help and Information" or "Help/Info."
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday,

[1] To view the applications, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

except Federal Holidays. Telephone: (202) 366–9826.

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

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [2] The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The issuance of the advanced air bag requirements was a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats.

The new requirements were phased-in, beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until the end of the phase-in period, i.e., September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers, each of which has petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small motor vehicle manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA has granted a number of these petitions, usually in situations in which the manufacturer is supplying standard air bags in lieu of advanced air bags.[3] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA is considering two key issues—

(1) whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and

(2) to the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA is considering whether it is in the public interest to continue to grant exemptions from these requirements, particularly under the same terms as in the past. The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA tentatively concludes that the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

NHTSA further notes that the granting of exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith." [4] In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.[5]

NHTSA invites comment on whether and in what circumstances (*e.g.,* nature of vehicles, number of vehicles, level of efforts to comply with the requirements, timing as to number of years since the requirements were implemented, etc.) it should continue to grant petitions for first time exemptions from the advanced air bag requirements of FMVSS No. 208 and petitions for renewed exemptions from those requirements. We note that any policy statements we may make in this area would not have the effect of precluding manufacturers from submitting subsequent petitions for exemption. However, we believe it could be helpful for manufacturers to know our general views in advance of submitting a petition.

We also request comment on the issue of, to the extent any future hardship exemptions from the advanced air bag requirements are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bag requirements, should be expected. In

[2] *See* 65 FR 30680 (May 12, 2000).

[3] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

[4] 49 U.S.C. 30113(b)(3)(B)(i)

[5] 49 CFR 555.6(a)(2)

this regard, we note the agency is authorized to condition the granting of exemptions on such terms as the Secretary considers appropriate.[6] In responding to some recent petitions for exemption from the advanced air bag requirements of FMVSS No. 208, NHTSA has considered the fact that the petitioner planned to install some countermeasures for the protection of child passengers.[7]

NHTSA also invites comment on the likelihood that a child or infant will be a passenger in any vehicles that would be produced and sold in the U.S. under the requested exemption.

II. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

The Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that "compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith."

The Act also authorizes the Secretary to grant a temporary exemption from a standard, for not more than 2,500 motor vehicles per year, to a manufacturer of any size, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds either that

■ The exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

■ The exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

■ Compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"[8] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

Finally, we note that under 49 CFR 555.8(e), "If an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal." This petition for renewal has been submitted by the deadline stated in 49 CFR 555.8(e).

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Tesla Motors, Inc., (Tesla) has submitted a petition asking the agency for renewal of its temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Tesla has requested a renewal of its exemption for a period of two years from January 29, 2011 to January 28, 2013.

Tesla is petitioning for renewal of its exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection.* Specifically, the petition requests an exemption from the advanced air bag requirements (S14), with the exception of the belted, rigid barrier provisions of S14.5.1(a); the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15); the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17); and the requirements to provide protection for infants and children (S19, S21, and S23). Tesla has requested a two-year extension of its exemption, from January 28, 2011 to January 28, 2013, for the Roadster model.

In a **Federal Register** document dated January 28, 2008, Tesla was granted a temporary exemption from the advanced air bag requirements of FMVSS No. 208 listed above for the Roadster.[9] The exemption was granted for the period from the date of publication until January 28, 2011. The basis for the grant was that compliance with the advanced air bag requirements of FMVSS No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard and that

[6] 49 U.S.C. 30113(b).

[7] *See, e.g.,* grant of petition of Think Technology AS, 74 FR 40634–01 (Aug. 12, 2009); grant of petition of Ferrari S.p.A., 74 FR 36303–02 (July 22, 2009).

[8] 49 U.S.C. 30113(b)(1).

[9] 73 FR 4944 (Docket No. NHTSA–2008–0013).

such exemption was in the public interest and consistent with the objectives of traffic safety.

In a November 24, 2010 petition, Tesla sought renewal of its exemption. The basis for Tesla's application is substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Tesla is a Delaware corporation headquartered in California with sales offices throughout the United States and overseas. Tesla currently manufactures and sells only one vehicle, the Roadster. Tesla has sold or leased 287 Roadsters in the 12 months prior to filing its petition for extension. Tesla states that it continues to be eligible for a financial hardship exemption, and that it has suffered substantial losses and will continue to do so while selling the Roadster.

Tesla began production of the all-electric Roadster in 2008. The Roadster has a single-speed electrically actuated automatic transmission and three phase, four pole AC induction motor. The Roadster has a combined range of 245 miles on a single charge. Under an agreement with Group Lotus plc (Lotus), Tesla purchases the Roadster "glider," which uses the chassis and several other systems of the Lotus Elise. The gliders are manufactured under Tesla's supervision and direction at a Lotus factory in the United Kingdom and then shipped to Menlo Park, California, where installation of the power train and other final steps are taken prior to sale of the vehicle in the United States. Tesla asserts that Lotus will cease manufacturing Roadster gliders in December 2011, and Tesla plans to finish production in early 2012 and offer remaining Roadsters for sale during 2012.

According to Tesla, the Roadster was conceived as a limited proof-of-concept for later generations of Tesla vehicles. Tesla intends to introduce its next electric vehicle, a four-door fully electric sedan known as the Model S. Tesla states that the Model S would meet or exceed all FMVSSs in effect by the time the vehicle is released for production in 2012.

Tesla contends that it is eligible for an economic hardship exemption. Tesla has produced fewer than 10,000 vehicles since the company's founding in 2003. Worldwide production of the Roadster for calendar year 2010 will be approximately 600 to 700 vehicles. Tesla also states that it will not produce more than 10,000 vehicles (combined Roadster and Model S production) per year during the requested exemption period.

In the January 2008 notice granting Tesla's original exemption, the agency determined that Lotus, as well as Tesla, was considered a manufacturer of the Roadster. The basis for this determination was information in the prior petition that Lotus would be assembling the Roadster. Nevertheless, the agency determined that Tesla was eligible for an economic hardship petition because the combined production of Lotus and Tesla was fewer than 10,000 vehicles.

In its petition for extension, Tesla contends that the relationship between Lotus and Tesla does not involve ownership, sponsorship, or any type of control of one entity over the other. Tesla also reiterates that, even if the production of Lotus and Tesla vehicles are combined, the total production is far below the threshold 10,000 vehicle per year limit for hardship exemptions.

Tesla cites five reasons why the failure to obtain the requested extension of its exemption would cause substantial economic hardship. First, Tesla has incurred cumulative net losses of $360 million since inception through September 30, 2010, and a net loss of $100 million for the first nine months of 2010. Tesla also expects cumulative losses to almost double before launch of the Model S. Second, Tesla contends that the loss of the ability to sell the Roadster in the United States would cause Tesla to incur severe financial harm, which would substantially increase the likelihood of breaching financial covenants in its loan documents with the U.S. Department of Energy, potentially depriving Tesla of a source of capital. Third, Tesla has committed certain remaining costs for the Roadster that cannot be cancelled, such as a fixed supply contract with Lotus and other suppliers until the end of 2011. Fourth, Tesla contends that ending U.S. sales of the Roadster would require Tesla to refund $2.4 million in deposits on Roadster reservations, exacerbating its financial hardship. Fifth, because the Roadster is the only Tesla model available in the United States, Tesla states that cancellation of the program would result in a significant loss of market share.

Tesla also contends that Lotus, and by extension Tesla, has exerted good faith efforts to achieve compliance with the advanced air bag requirements. Tesla notes that the Roadster shares a number of common components and systems with the Lotus Elise, including the passive safety systems. Tesla believes that, for the reasons outlined in Lotus's petition for an extension of its FMVSS No. 208 exemption for the Elise, Lotus has exerted good faith efforts to comply with the advanced air bag requirements.[10] Furthermore, Tesla states that it is in no better position than Lotus to develop an advanced air bag system for the Elise-based Roadster. Like the Lotus Elise, the Tesla Roadster is coming to the end of its model life. Given the limited number of Roadsters planned for production, Tesla believes that developing an advanced air bag system for the Roadster at this time is economically impracticable. Tesla also contends that it has been using the three years of its current exemption to develop the Model S, which will include advanced air bags.

Tesla also contends that the requested extension of its exemption is in the public interest for five reasons. First, Tesla states that granting the petition would encourage development and sale of highway-capable electric vehicles by Tesla and other manufacturers. Second, Tesla contends that the public interest considerations supporting other similar extension petitions previously granted by NHTSA exist for Tesla as well. Third, Tesla states that the Roadster has a high degree of safety because of its design. Even without advanced air bags, Tesla believes that the requested exemption would have a negligible impact on vehicle safety because of the limited number of vehicles that would be sold in the United States under the extension. Fourth, Tesla contends that the Roadster does not pose an unreasonable risk to safety of infants or children because young children are unlikely to be passengers in the Roadster and neither Tesla nor Lotus has received any complaints, reports, or information of air-bag-related injuries. Fifth, Tesla contends that granting its petition will have a positive impact on U.S. employment in the automotive industry, and that denying its petition would not only directly impact the jobs of current Tesla employees supporting the Roadster, but also potentially compromise the company's ability to move forward with the Model S.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition from Tesla is complete and that Tesla is eligible for an extension of its

[10] Tesla has included, as an attachment to its petition, a copy of Lotus's petition for an extension of its temporary exemption from certain provisions of FMVSS No. 208. That petition is being considered separately. A separate notice of receipt published in today's **Federal Register** addresses Lotus's petition.

temporary exemption. The agency has not made any judgment on the merits of the application, and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: June 1, 2011.

Christopher J. Bonanti

Associate Administrator for Rulemaking.

[FR Doc. 2011–14183 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0069]

Lotus Cars Ltd. Receipt of Petition for Renewal of Temporary Exemption From the Advanced Air Bag Requirements of FMVSS No. 208

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

ACTION: Notice of receipt of a petition for renewal of a temporary exemption from certain provisions of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.*

SUMMARY: In accordance with the procedures in 49 CFR Part 555, Lotus Cars Ltd. has petitioned the agency for renewal of a temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that the petitioner avers that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard.[1] This notice of receipt of an application for renewal of temporary exemptions is published in accordance with statutory and administrative provisions. NHTSA has made no judgment on the merits of the application.

DATES: You should submit your comments not later than July 8, 2011.

FOR FURTHER INFORMATION CONTACT: David Jasinski, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building 4th Floor, Room W41–213, Washington, DC 20590. *Telephone:* (202) 366–2992; Fax: (202) 366–3820.

[1] To view the applications, go to *http://www.regulations.gov* and enter the docket number set forth in the heading of this document.

ADDRESSES: We invite you to submit comments on the application described above. You may submit comments identified by docket number at the heading of this notice by any of the following methods:

- *Web Site: http://www.regulations.gov.* Follow the instructions for submitting comments on the electronic docket site by clicking on "Help and Information" or "Help/Info."
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- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
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Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. We will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, we will also consider comments filed after the closing date.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 am and 5 pm, Monday through Friday, except Federal Holidays. *Telephone:* (202) 366–9826.

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

Confidential Business Information: If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR Part 512).

SUPPLEMENTARY INFORMATION:

I. Advanced Air Bag Requirements and Small Volume Manufacturers

In 2000, NHTSA upgraded the requirements for air bags in passenger cars and light trucks, requiring what are commonly known as "advanced air bags." [2] The upgrade was designed to meet the twin goals of improving protection for occupants of all sizes, belted and unbelted, in moderate-to-high-speed crashes, and of minimizing the risks posed by air bags to infants, children, and other occupants, especially in low-speed crashes.

The issuance of the advanced air bag requirements was a culmination of a comprehensive plan that the agency announced in 1996 to address the adverse effects of air bags. This plan also included an extensive consumer education program to encourage the placement of children in rear seats.

The new requirements were phased-in, beginning with the 2004 model year. Small volume manufacturers were not subject to the advanced air bag requirements until the end of the phase-in period, i.e., September 1, 2006.

In recent years, NHTSA has addressed a number of petitions for exemption from the advanced air bag requirements of FMVSS No. 208. The majority of these requests have come from small manufacturers, each of which has petitioned on the basis that compliance would cause it substantial economic hardship and that it has tried in good faith to comply with the standard. In recognition of the more limited resources and capabilities of small motor vehicle manufacturers, authority to grant exemptions based on substantial economic hardship and good faith efforts was added to the Vehicle Safety Act in 1972 to enable the agency to give those manufacturers additional time to comply with the Federal safety standards.

NHTSA has granted a number of these petitions, usually in situations in which

[2] *See* 65 FR 30680 (May 12, 2000).

the manufacturer is supplying standard air bags in lieu of advanced air bags.[3] In addressing these petitions, NHTSA has recognized that small manufacturers may face particular difficulties in acquiring or developing advanced air bag systems.

Notwithstanding those previous grants of exemption, NHTSA is considering two key issues—

(1) Whether it is in the public interest to continue to grant such petitions, particularly in the same manner as in the past, given the number of years these requirements have now been in effect and the benefits of advanced air bags, and

(2) To the extent such petitions are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bags, should be expected.

While the exemption authority was created to address the problems of small manufacturers and the agency wishes to be appropriately attentive to those problems, it was not anticipated by the agency that use of this authority would result in small manufacturers being given much more than relatively short term exemptions from recently implemented safety standards, especially those addressing particularly significant safety problems.

Given the passage of time since the advanced air bag requirements were established and implemented, and in light of the benefits of advanced air bags, NHTSA is considering whether it is in the public interest to continue to grant exemptions from these requirements, particularly under the same terms as in the past. The costs of compliance with the advanced air bag requirements of FMVSS No. 208 are costs that all entrants to the U.S. automobile marketplace should expect to bear. Furthermore, NHTSA understands that, in contrast to the initial years after the advanced air bag requirements went into effect, low volume manufacturers now have access to advanced air bag technology. Accordingly, NHTSA tentatively concludes that the expense of advanced air bag technology is not now sufficient, in and of itself, to justify the grant of a petition for a hardship exemption from the advanced air bag requirements.

NHTSA further notes that the granting of exemptions from motor vehicle safety standards is subject to the agency's finding that the petitioning manufacturer has "tried to comply with the standard in good faith."[4] In response to prior petitions, NHTSA has granted temporary exemptions from the advanced air bag requirements as a means of affording eligible manufacturers an additional transition period to comply with the exempted standard. In deciding whether to grant an exemption based on substantial economic hardship and good faith efforts, NHTSA considers the steps that the manufacturer has already taken to achieve compliance, as well as the future steps the manufacturer plans to take during the exemption period and the estimated date by which full compliance will be achieved.[5]

NHTSA invites comment on whether and in what circumstances (e.g., nature of vehicles, number of vehicles, level of efforts to comply with the requirements, timing as to number of years since the requirements were implemented, etc.) it should continue to grant petitions for first time exemptions from the advanced air bag requirements of FMVSS No. 208 and petitions for renewed exemptions from those requirements. We note that any policy statements we may make in this area would not have the effect of precluding manufacturers from submitting subsequent petitions for exemption. However, we believe it could be helpful for manufacturers to know our general views in advance of submitting a petition.

We also request comment on the issue of, to the extent any future hardship exemptions from the advanced air bag requirements are granted, what plans and countermeasures to protect child and infant occupants, short of compliance with the advanced air bag requirements, should be expected. In this regard, we note the agency is authorized to condition the granting of exemptions on such terms as the Secretary considers appropriate.[6] In responding to some recent petitions for exemption from the advanced air bag requirements of FMVSS No. 208, NHTSA has considered the fact that the petitioner planned to install some countermeasures for the protection of child passengers.[7]

NHTSA also invites comment on the likelihood that a child or infant will be a passenger in any vehicles that would be produced and sold in the U.S. under the requested exemptions.

[3] *See, e.g.,* grant of petition to Panoz, 72 FR 28759 (May 22, 2007), or grant of petition to Koenigsegg, 72 FR 17608 (April 9, 2007).

[4] 49 U.S.C. 30113(b)(3)(B)(i).

[5] 49 CFR 555.6(a)(2).

[6] 49 U.S.C. 30113(b).

[7] *See, e.g.,* grant of petition of Think Technology AS, 74 FR 40634–01 (Aug. 12, 2009); grant of petition of Ferrari S.p.A., 74 FR 36303–02 (July 22, 2009).

II. Statutory Authority for Temporary Exemptions

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. Chapter 301, provides the Secretary of Transportation authority to exempt, on a temporary basis and under specified circumstances, motor vehicles from a motor vehicle safety standard or bumper standard. This authority is set forth at 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

The Act authorizes the Secretary to grant a temporary exemption to a manufacturer of not more than 10,000 motor vehicles annually, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds that "compliance with the standard would cause substantial economic hardship to a manufacturer that has tried to comply with the standard in good faith."

The Act also authorizes the Secretary to grant a temporary exemption from a standard, for not more than 2,500 motor vehicles per year, to a manufacturer of any size, on such terms as he deems appropriate, if he finds that the exemption would be consistent with the public interest and the Safety Act and if he also finds either that

■ The exemption would make easier the development or field evaluation of a new motor vehicle safety feature providing a safety level at least equal to the safety level of the standard;

■ The exemption would make the development or field evaluation of a low-emission motor vehicle easier and would not unreasonably lower the safety level of that vehicle; or

■ Compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles.

NHTSA established Part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions. Under Part 555, a petitioner must provide specified information in submitting a petition for exemption. These requirements are specified in 49 CFR 555.5, and include a number of items. Foremost among them are that the petitioner must set forth the basis of the application under § 555.6, and the reasons why the exemption would be in the public interest and consistent with the objectives of 49 U.S.C. Chapter 301.

A manufacturer is eligible to apply for a hardship exemption if its total motor vehicle production in its most recent

year of production did not exceed 10,000 vehicles, as determined by the NHTSA Administrator (49 U.S.C. 30113).

In determining whether a manufacturer of a vehicle meets that criterion, NHTSA considers whether a second vehicle manufacturer also might be deemed the manufacturer of that vehicle. The statutory provisions governing motor vehicle safety (49 U.S.C. Chapter 301) do not state that a manufacturer has substantial responsibility as manufacturer of a vehicle simply because it owns or controls a second manufacturer that assembled that vehicle. However, the agency considers the statutory definition of "manufacturer" (49 U.S.C. 30102) to be sufficiently broad to include sponsors, depending on the circumstances. Thus, NHTSA has stated that a manufacturer may be deemed to be a sponsor and thus a manufacturer of a vehicle assembled by a second manufacturer if the first manufacturer had a substantial role in the development and manufacturing process of that vehicle.

While 49 U.S.C. 30113(b) states that exemptions from a Safety Act standard are to be granted on a "temporary basis,"[8] the statute also expressly provides for renewal of an exemption on reapplication. Manufacturers are nevertheless cautioned that the agency's decision to grant an initial petition in no way predetermines that the agency will repeatedly grant renewal petitions, thereby imparting semi-permanent status to an exemption from a safety standard. Exempted manufacturers seeking renewal must bear in mind that the agency is directed to consider financial hardship as but one factor, along with the manufacturer's ongoing good faith efforts to comply with the regulation, the public interest, consistency with the Safety Act, generally, as well as other such matters provided in the statute.

Finally, we note that under 49 CFR 555.8(e), "If an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal." This petition for renewal has been submitted by the deadline stated in 49 CFR 555.8(e).

III. Overview of Petition

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR Part 555, Lotus Cars Ltd. (Lotus) has submitted a petition asking the agency for renewal of its temporary exemption from certain advanced air bag requirements of FMVSS No. 208. The basis for the application is that compliance would cause the petitioner substantial economic hardship and that the petitioner has tried in good faith to comply with the standard. Lotus has requested a renewal of its exemption for a period of two years, from September 1, 2009 to August 31, 2011.

Lotus is petitioning for a renewal of its exemption from certain requirements of FMVSS No. 208, *Occupant Crash Protection.* Specifically, the petition requests an exemption from the rigid barrier unbelted test requirement with the 50th percentile adult male test dummy (S14.5.2), the rigid barrier test requirement using the 5th percentile adult female test dummy (belted and unbelted, S15), the offset deformable barrier test requirement using the 5th percentile adult female test dummy (S17), the requirements to provide protection for infants and children (S19, S21, and S23), and the requirement using an out-of-position 5th percentile adult female test dummy at the driver position (S25) in FMVSS No. 208, which relate to the advanced air bag requirements. Lotus has requested a two-year extension of its exemption for the Elise platform, which includes a convertible, a coupe, and the Exige variant of the coupe.

In a **Federal Register** document dated September 7, 2006, Lotus was granted a temporary exemption from the advanced air bag requirements of FMVSS No. 208 listed above for the Elise.[9] The exemption was granted for the period from September 1, 2006 to August 31, 2009. The basis for the grant was that compliance with the advanced air bag requirements of FMVSS No. 208 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard and that such exemption was in the public interest and consistent with the objectives of traffic safety.

Lotus sought renewal of its exemption in a petition dated June 15, 2009. The basis for Lotus's application is substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. Lotus is a corporation organized under the laws of England. Lotus has never manufactured more than 6,000 vehicles in any calendar or model year.[10] Lotus maintains that its eligibility for a financial hardship exemption has been confirmed four times since 1999 and the material facts underlying those determinations have not changed.[11]

The Elise platform is a sports car that has been the only model Lotus sells in the United States. Lotus introduced the Evora in 2010, which has a fully compliant advanced air bag system. The Evora is more expensive than the Elise, which remains Lotus's lowest-priced, entry-level model.

Lotus set forth five factors that favor granting its exemption. First, Lotus cited its continued financial hardship, which has been exacerbated by the global recession that has hit the automobile industry particularly hard. Second, Lotus noted the technical roadblocks to including advanced air bags in the Elise discussed in the 2006 notice. Third, Lotus stated that the next-generation Elise is behind schedule. Fourth, Lotus explained that the Evora's advanced air bag system will not carry over to the Elise, and that the company faces the challenge of developing a second advanced air bag system for the next-generation Elise. Fifth, Lotus stated that it needs to continue U.S. sales of the current Elise for 24 months while the development of the next-generation Elise and its advanced air bag system continues and is brought to completion.

Lotus contends that it continues to experience substantial economic hardship. Although Lotus states that it has had one profitable year in the last five years, it has suffered a substantial cumulative loss over a five-year period. Lotus's financial projections indicate that Lotus will be profitable with or without an exemption. However, Lotus contends that its projections of profitability with or without an exemption do not preclude a finding that the requisite financial hardship for a temporary exemption exists. Furthermore, Lotus states that its profits would be used to pay debt incurred as a result of its adoption of advanced air bags in the Evora and the next-generation Elise. Lotus claims that, without the exemption, it would lose at least 750 U.S. sales of the Elise, costing Lotus $10.5 million in projected profit, in addition to loss of market share of its entry-level model to other brands.

Lotus also alleges that it has made a good faith effort to develop advanced air bags. First, it notes that it has developed the Evora model with advanced air bags, as it promised in its original exemption petition. Lotus stated that the final version of the next-generation Elise with

[8] 49 U.S.C. 30113(b)(1).

[9] 71 FR 52851, 52859–62 (Docket No. NHTSA–2006–25324).

[10] This number includes vehicles that Lotus has manufactured for Tesla Motors, Inc.

[11] *See* 64 FR 61379 (Nov. 10, 1999); 68 FR 10066 (Mar. 3, 2003); 69 FR 5658 (Feb. 5, 2004); 71 FR 52851, 52859–62 (Feb. 5, 2004).

advanced air bags has been delayed 24 months because the cost of the Evora project was greater than expected, Lotus's revenues were less than expected, and its financial constraints were exacerbated by the global economic recession and automobile market downturn in late 2008. As a result, Lotus alleges that it was unable to fully fund the next-generation Elise program while developing the Evora.

Lotus also reiterates that the Evora's advanced air bag system does not carry over to the next generation Elise. Lotus notes that, after discovering this, it reexamined the possibility of equipping the current Elise with advanced air bags, in light of changes in the supplier situation since its last effort in 2005. However, Lotus concluded that advanced air bags for the current Elise remain infeasible.

Lotus also contends that an extension is in the public interest and consistent with the objectives of the Safety Act, citing the reasons stated in the September 2006 grant. Lotus states that the air bags in the Elise do not pose a safety risk. In support, Lotus cites the fact that there are no known injuries or deaths to infants, children, or other occupants caused by its air bags; that its crashworthy design provides a high level of safety without advanced air bags; and that its passenger seat is fixed in the rearmost position. In addition, Lotus makes clear in its owner's manual that it does not recommend the Elise be used for transporting children. Lotus also notes that, if an exemption is not granted, consumers would be adversely affected due to the loss of the Elise from the marketplace. Further, Lotus notes that the Elise is fuel efficient and it will comply with all other FMVSSs.

IV. Completeness and Comment Period

Upon receiving a petition, NHTSA conducts an initial review of the petition with respect to whether the petition is complete and whether the petitioner appears to be eligible to apply for the requested petition. The agency has tentatively concluded that the petition from Lotus is complete and that Lotus is eligible for an extension of its temporary exemption. The agency has not made any judgment on the merit of the application, and is placing a non-confidential copy of the petition in the docket.

We are providing a 30-day comment period. After considering public comments and other available information, we will publish a notice of final action on the application in the **Federal Register**.

Issued on: June 1, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–14180 Filed 6–7–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2011–0012]

Guidance on Deposit-Related Consumer Credit Products

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Proposed guidance with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing guidance on safe and sound banking practices in connection with deposit-related consumer credit products. Such products include automated overdraft protection and direct deposit advance programs.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible. Please use the title "Guidance on Deposit-Related Consumer Credit Products" to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *E-mail: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include "OCC" as the agency name and "Docket ID OCC–2011–0012" in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this notice by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Michael S. Bylsma, Director, Community and Consumer Law Division, (202) 874–5750; Grovetta Gardineer, Deputy Comptroller for Compliance Policy, (202) 874–4428; or Kevin Russell, Director, Retail Credit Risk, (202) 874–5170, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The Office of the Comptroller of the Currency (OCC) is proposing supervisory guidance to clarify the OCC's application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft protection and direct deposit advance programs. This guidance details the principles that the OCC expects national banks to follow in connection with any deposit-related consumer credit product to address potential operational, reputational, compliance, and credit risks. This approach provides a high degree of flexibility for banks to structure and operate their programs in a prudent and safe and sound manner that provides for fair treatment of customers without dictating specific product terms. The OCC expects national banks to apply the principles set forth in this guidance to any deposit-related consumer credit product they offer. Appendixes to this guidance illustrate application of these principles to two specific consumer credit products—automated overdraft protection products and deposit advance products.

Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, effective July 21, 2011, all functions of the Office of Thrift Supervision (OTS) and the Director of the OTS relating to Federal savings associations is transferred to the OCC.

As a result, the OCC will assume responsibilities for the ongoing examination, supervision, and regulation of Federal savings associations. Any final guidance on deposit-based credit products in effect for national banks on or after July 21, 2011 will also apply to Federal savings associations.

Text of Proposed Guidance

The text of the proposed Supervisory guidance on deposit-related consumer credit products follows:

Supervisory Guidance On Deposit-Related Consumer Credit Products

Purpose

The Office of the Comptroller of the Currency (OCC) is issuing guidance to clarify the OCC's application of principles of safe and sound banking practices in connection with deposit-related consumer credit products such as automated overdraft protection and direct deposit advance programs. This bulletin details the principles that the OCC expects national banks to follow in connection with any deposit-related consumer credit product to address potential operational, reputational, compliance, and credit risks. This approach provides a high degree of flexibility for banks to structure and operate their programs in a prudent and safe and sound manner that provides for fair treatment of customers without dictating specific product terms.

The principles articulated in this guidance are predicated on the premise that bankers should provide their customers with products they need, and that bankers should not use these products to take advantage of their customer relationship. Through its supervisory process, the OCC has found that a small percentage, but not an insignificant number, of banks are administering deposit-related consumer credit programs without proper attention to these risks. In some cases, these program weaknesses are strikingly apparent.

The OCC accordingly expects national banks to apply the principles outlined in this bulletin to any deposit-related consumer credit product they offer. The OCC expects bankers and examiners to use sound judgment and common sense when applying these principles to specific programs and products. Appendixes to this bulletin illustrate application of these principles to two specific consumer credit products—automated overdraft protection products and deposit advance products.

Supervisory Principles Applicable To Deposit-Related Consumer Credit Products

- Disclosure—Customers should be provided clear and conspicuous disclosures prior to enrollment, consistent with applicable law, about program costs, terms, and material limitations before they are provided a deposit-related credit product. Customers also should be provided information about alternative deposit-related credit products, if any, offered by the bank.
- Legal compliance—Any deposit-related credit product, and the manner in which it is offered or marketed, must comply with applicable law, including the prohibition against unfair and deceptive practices in the Federal Trade Commission Act.[1]
- *Affirmative request*—Customers should not be automatically enrolled in programs for deposit-related credit products. Enrollment should occur only after the customer has received appropriate disclosures, has made an affirmative request for the product, and has agreed to abide by product terms, including associated fees.[2] Before approving the customer for the product, the bank should have sufficient information about the customer to evaluate that the customer meets the bank's eligibility standards, as described below. Account materials and marketing should not mislead customers about the optional nature of the product or otherwise promote routine use or undue reliance on deposit-related credit products.
- *Program availability and prudent eligibility standards*—Policies and procedures should set forth the eligibility criteria that must be met by a depositor to obtain the deposit-related credit product. An appropriate degree of analysis should be conducted before the request is approved to determine whether the customer will be able to manage and repay the credit obligations arising from the product appropriately.
- *Prudent limitations on product costs and usage*—Deposit-related credit products should be subject to prudent limitations on credit extensions, customer costs, and usage. Fees should be based on safe and sound banking principles,[3] and take into account other appropriate factors including reputation and strategic risks to the bank. For example, a bank should consider the significance of revenue from a particular product and monitor for any undue reliance on the fees generated by that product for its revenue and earnings.
- *Monitoring and risk assessments*—The volume of, and revenue from, deposit-related credit products and changes in customer usage should be regularly monitored to identify risks. Appropriate action should be taken to address any risks that are identified including excessive usage and nonperformance, such as reassessing a customer's creditworthiness; adjusting credit terms, fees, or limits; suspending or terminating the credit feature; or closing accounts.
- *Management oversight*—Bank management should exercise appropriate oversight of new products and services, through receipt and review of regular reports on product usage, fee income, and legal compliance, and through periodic audits. Appropriate oversight includes monitoring of third-party vendors that provide services related to the product. Bank management should be vigilant in assuring adherence to these principles and should take immediate steps to address noncompliance and reputation risks.
- *Account management and charge-offs*—Applicable guidelines on account management and charge-offs of uncollectible balances also should be followed.

Appendix A

Safe and Sound Banking Practices in Connection with Automated Overdraft Protection Programs

Retail overdraft protection programs have evolved in significant ways since the federal banking agencies issued the "Joint Agency Guidance on Overdraft Protection Programs" in 2005.[4] With the increasing volume of electronic transactions during this period, overdraft protection has evolved from a program that functions primarily in the context of check-based overdrafts to one that functions increasingly in the context of electronic payments-based overdrafts. These developments, in turn, have presented new operational risks and increasing credit risks posed by customers who use the product extensively. The OCC is concerned with

[1] *See* OCC Advisory Letter 2002–3, "Guidance on Unfair or Deceptive Acts or Practices," (Mar. 22, 2002).

[2] Unless otherwise specified in regulation or guidance, banks have flexibility in how they obtain a customer's affirmative request, including through clear and conspicuous language in an application, separate opt-in form, or account agreement whereby the customer affirmatively consents to be enrolled in the program and to pay any related fees for the service.

[3] *See* 12 CFR 7.4002.

[4] 70 FR 9127 (Feb. 24, 2005). *http://www.gpo.gov/fdsys/pkg/FR–2005–02–24/pdf/05–3499.pdf*

several practices that have developed during this intervening time, including:

- Excessive reliance on fee income from overdraft protection programs;
- Failure to impose responsible limits on customer costs and imposition of fees that cumulatively exceed a customer's overdraft credit limit;
- Failure to assess a customer's ability to manage and repay overdraft protection before it is made available to the customer;
- Failure to monitor overdraft protection usage to identify excessive usage and credit risks and to take steps to address credit risks;
- Failure to charge off overdrafts in a timely manner;
- Failure to ensure adequate risk management of overdraft protection programs, with appropriate internal audits and compliance reviews;
- Failure to monitor and control promotional and sales practices for potentially misleading statements; and
- Payment processing intended to maximize overdrafts and related fees.

While certain new rules have been implemented recently affecting overdraft protection programs,[5] the OCC believes additional supervisory guidance is warranted to address the heightened safety and soundness risks that have arisen over time affecting the broad range of retail transactions covered by overdraft protection programs. This appendix describes how the OCC will apply the safety and soundness principles applicable to deposit-related consumer credit products to overdraft protection.

This appendix updates and expands on the 2005 "Joint Agency Guidance on Overdraft Protection Programs" (joint agency guidance). The OCC expects national banks to develop policies and procedures governing automated retail overdraft protection programs that implement both this guidance and the joint agency guidance, including the section entitled "Best Practices," as applicable.[6]

Scope

All automated overdraft protection plans that cover overdrafts from electronic (including ATM, point of sale (POS), preauthorized debits, and online banking transactions) and check-based consumer transactions are subject to the principles described in this appendix. Ad hoc and accommodation payment of overdrafts to an individual customer are not addressed in this appendix.[7]

Program Availability and Prudent Eligibility Standards

National banks should adopt policies and procedures concerning the availability of overdraft protection that set forth eligibility criteria that must be met by a depositor to obtain automated overdraft protection. Such policies and procedures should provide that a customer must "opt-in" to the program, such as by making an affirmative request or application to be enrolled in the service and affirmatively agreeing to pay any fee that may be imposed for payment of overdrafts arising from debits, checks, POS and ACH transactions, as applicable.[8] Account materials and marketing should not mislead customers about the optional nature of the program or otherwise promote routine use or undue reliance on the program.[9]

If not already conducted as part of the initial deposit account opening, prudential criteria for enrolling a customer in an overdraft protection program should include an initial assessment of the customer's risk with respect to overdraft account privileges. The scope and rigor of this assessment may vary depending on the credit and deposit profile of the customer and other relevant risk factors, but an objective should be to determine whether the customer poses undue risks as indicated by, for instance, a history of overdrawing an account or information suggesting an inability or unwillingness to repay credit.

A customer should be permitted to "opt-out" of program coverage at any time after which no additional overdraft fees may be imposed, and be provided clear notice of this ability.

Disclosures

Customers who apply for and obtain overdraft protection should be provided sufficient information about a product's costs, risks, and limitations when the product is offered to make an informed choice. Customers also should be provided information about alternative overdraft services and credit products, if any, offered by the bank. In addition to receiving cost information, as required by the joint agency guidance, customers also should receive disclosure of the following information to manage their account prudently:

- Clear disclosure about the order of processing transactions and the fact that the order can affect the total amount of overdraft fees incurred by a customer.
- Notice when overdraft protection is suspended or terminated, and when it is reinstated, as applicable.

As required by the Truth in Savings Act regulations, banks that provide periodic statements to customers must disclose the total dollar amount of overdraft fees that have been imposed during the period and year-to-date.[10]

Prudent Limitations

National banks should establish prudent programmatic limitations on the amount of credit that may be extended under an overdraft protection program, the number of overdrafts and the total amount of fees that may be imposed per day and per month, and any transaction amount below which an overdraft fee will not be imposed. These limitations should be established taking into account general ability to repay and safety and soundness considerations and the order in which the bank processes transactions. These limitations should be clearly disclosed to customers at the time the product is offered.[11]

The order in which transactions will be processed also should be subject to standards to ensure that transaction processing is not solely designed or generally operated to maximize overdraft fee income. For example, such standards may provide for processing individual or batched items in the order received, by check or serial number sequence, or in random order.

Monitoring and Risk Assessments

Accounts should be subject to monitoring and segmentation by customer usage to detect indications of excessive overdrafts (and related

[5] *See* 12 CFR 205.17 (Regulation E) and 12 CFR 230.11 (Regulation DD).

[6] This joint agency guidance describes the circumstances concerning when overdraft protection programs may be subject to certain requirements in the Truth in Lending Act and the Equal Credit Opportunity Act. This appendix is not intended to affect whether or when such laws may apply to a particular program.

[7] National banks that authorize overdrafts on an ad hoc and accommodation basis should control for and manage any related reputational and compliance risks.

[8] Regulation E prohibits financial institutions from assessing a fee or charge on a customer's account for paying an overdraft resulting from an ATM or one-time debit transaction unless the institution has obtained the customer's affirmative written consent. 12 CFR 205.17(b). For overdraft programs that are not already covered by the Regulation E opt-in requirements, such as check-based overdrafts, affirmative consent need only be obtained from new account holders. Banks have flexibility in how they obtain a customer's affirmative request, provided that there is clear disclosure of the terms and fees and customer consent.

[9] *See* OCC Bulletin 2010–15, "Overdraft Protection: Opt-In Requirements and Related Marketing Issues."

[10] 12 CFR 230.11.

[11] Other prudential limitations may include offering a grace period of one or more days to allow a customer to return the account to a positive balance before any overdraft fee may be imposed.

overdraft protection fees) and/or potential changes to repayment capacity with respect to the overdraft product. A national bank should review and evaluate the account as they deem appropriate, such as in the following circumstances:

- The account has incurred overdrafts in excess of the overdraft credit limit applicable to the account;
- The account has incurred the daily maximum number of overdraft transactions repeatedly during any month, whether or not a fee is imposed;
- The account has incurred the daily maximum number of overdraft fees repeatedly during any month; and
- The accountholder is exhibiting excessive usage of other credit products connected to the account.

In such circumstances, the bank should determine whether the account continues to be viable or whether credit and aggregate fee limits need to be reduced, and take appropriate action. Such a determination should include a more in-depth analysis of the borrower's ability to manage and repay overdraft protection. The customer also should be notified of alternatives to overdraft protection, such as linked deposit accounts, or other lines of credit.

If, after account review and making any appropriate changes to an account, the account continues to demonstrate excessive overdrafts, overdraft privileges should be terminated and, if appropriate, the account should be closed.

Management Oversight

Bank management should receive regular reports on overdraft volume, profitability, and credit performance. These reports should segment accounts by level of overdrafts to identify excessive overdraft protection usage. Management also should receive reports that describe the status and outcome of internal reviews and evaluations of accounts identified as demonstrating excessive usage.

Charge-Offs

Overdraft protection should be suspended or terminated when the customer no longer meets the eligibility criteria, has declared bankruptcy, or is in default on repayment of an overdraft or on any other loan with the bank. Overdraft balances should be charged off when considered uncollectible, but no later than 60 days from the date first overdrawn. If an account has been continually overdrawn for 60 days or more, it must be closed and charged off.

Appendix B

Safe and Sound Banking Practices in Connection with Deposit Advance Programs

"Deposit advance" products are short-term, open-end lines of credit that are generally made available to retail account holders with recurring direct deposits. These products typically operate as follows: advances under the line of credit are made only upon request by the customer and are limited to the amount, or a portion of the amount, of the anticipated deposit. Advances are made in fixed dollar increments and a flat fee is assessed for each advance. For example, a customer may obtain advances in increments of $10 or $20 for $1 or $2 per increment borrowed. Multiple advances can be outstanding at any time up to any credit limit that has been established. Full repayment typically is required during a single deposit cycle—the amount advanced, plus the applicable finance charge, is usually repaid when the next direct deposit is credited to a customer's account. If a deposit is insufficient to repay the advance in full, repayment may be made with the next or subsequent deposits.

There are various practices associated with deposit advance products that raise operational and credit risks and supervisory concerns, including:

- Failure to evaluate the customer's ability to repay the credit line appropriately, taking into account the customer's recurring deposits and other relevant information;
- Requiring full repayment of the advance out of a single deposit, which reduces the funds available to customers for daily living expenses, which can cause overdrafts;
- Steering customers who rely on direct deposits of federal benefits payments as their principal source of income to deposit advance products;
- Failure to disclose the costs of deposit advances; and
- Failure to monitor accounts for excessive usage and costs.

This appendix describes how the OCC will apply the safety and soundness principles applicable to deposit-related consumer credit products to deposit advance products.

Product Availability and Prudent Eligibility Standards

National banks should adopt policies and procedures that set forth eligibility criteria that must be met by a retail depositor to obtain the deposit advance service. Such policies and procedures also should provide that a customer must "opt-in" to the program, by making an affirmative request or application for enrollment in the deposit advance program and affirmatively agreeing to pay any fee imposed for the service.[12] Account materials and marketing should not mislead customers about the optional nature of the program or otherwise promote routine use or undue reliance on the product.

Prudential criteria for enrolling a customer in a deposit advance program should include risk assessment criteria. Such criteria would include an assessment of the customer's willingness and ability to repay the advance based on information about the customer's continued employment or other recurrent source(s) of income from which the direct deposit is derived and other relevant information.

A customer should be permitted to "opt-out" of program coverage at any time, after which no future advances may be made or related fees imposed, and be provided clear notice of this ability.

Disclosures

Customers should receive clear and conspicuous disclosures—before the customer is enrolled—about key program criteria and limitations, costs, and risks. For example, these disclosures would:

- Describe the operation, fees, costs, and any limitations on the program;
- Explain that direct deposit advances can be costly and inform customers of alternative deposit-related credit products, if any, offered by the bank.
- Explain transaction-processing policies for repayment of a credit advance including, as applicable, the fact that repayment may take priority over the processing of other items such as checks and could result in overdrafts or returned items and associated fees;
- Explain how the loan must be repaid if a deposit is insufficient; and
- Describe key program features affecting program protections, including any rescission or refund policies, cancellation policies, and cooling-off periods.

Prudent Limitations

National banks should establish prudent programmatic limitations that generally take into account the amount of the customer's recurring direct deposits; the need for a portion of deposited funds to remain available to the customer for daily expenses; account usage; and credit extended to

[12] Affirmative consent need only be obtained in connection with new enrollments in a deposit advance program.

the customer, including other deposit-based loans, if applicable. These include limits on:

- The number of periods that back-to-back advances may be made before a cooling-off period will be triggered;
- The number of months in which advances may be outstanding;
- The total amount or percentage of any deposit that may be advanced in any period; and
- The total amount or percentage of any deposit that may be used for repayment of the advance.

These limits should be adjusted, as appropriate, based on risks identified through account monitoring. For example, if a customer's direct deposits stop, no further extensions of credit should be permitted under the program.

Repayment Terms

Deposit advances should be permitted to be repaid by direct deposit or by separate payment in advance of the date a deposit would be debited without any additional fee. When program terms allow for substantial advances relative to the regular deposit amount, advances should be permitted to be repaid in more than one installment over an extended period of more than one month. National banks should not permit repayments of deposit advances that would overdraw the account or permit additional advances during any periods of account overdraft.

Monitoring and Risk Assessments

Deposit-advance accounts should be subject to reasonable periodic monitoring to ensure that circumstances have not changed that adversely affect credit risk and to identify excessive usage. Monitoring should include overdraft and returned-item activity in the account. There should be appropriate follow up with the customer, if warranted, about use of the account, repayment options, and credit alternatives.

Management Oversight

Bank management should receive regular reports on volume, profitability, and credit performance of the deposit advance program. These reports should segment accounts by level of line usage to identify excessive deposit-advance usage. Management also should receive reports that describe the status and outcome of internal reviews and evaluations of accounts identified as demonstrating excessive usage.

Charge-Offs

Deposit advances that are not repaid in accordance with the account terms should be charged off.

Dated: June 1, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–14093 Filed 6–7–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Renewal Without Change; Comment Request; Nine Bank Secrecy Act Recordkeeping Requirements

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to recordkeeping requirements found in existing regulations requiring financial institutions to keep records pertaining to Bank Secrecy Act (BSA) reportable activities. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before August 8, 2011.

ADDRESSES: *Written comments should be submitted to:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Attention:* BSA Recordkeeping Requirements Comments. Comments also may be submitted by electronic mail to the following *Internet address: regcomments@fincen.gov,* again with a caption, in the body of the text, "BSA Recordkeeping Requirements Comments."

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732, option 6.

SUPPLEMENTARY INFORMATION:

Abstract: The Director of the Financial Crimes Enforcement Network (FinCEN) is the delegated administrator of the BSA. The BSA authorizes the Director to issue regulations to require all financial institutions defined as such in the BSA to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[1]

Regulations implementing section 5318(h)(1) of the BSA are found in part at 31 CFR chapter X. In general, the regulations require financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 1010.100 to maintain financial records of BSA covered transactions.

1. *Title:* Special rules for casinos 31 CFR 1021.210(b), 31 CFR 1021.100(a)-(e)(Old Ref. 31 CFR 103.64), and 31 CFR 1010.430 (Old Ref. 31 CFR 103.38).

OMB Number: 1506–0051.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Burden: The estimated number of recordkeepers is 925. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 92,500 hours.

2. *Title:* Additional records to be made and retained by currency dealers or exchangers (31 CFR 1022.410 (Old Ref. 31 CFR 103.37) and 31 CFR 1010.430 (Old Ref. 31 CFR 103.38) .

OMB Number: 1506–0052.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

Burden: The estimated number of recordkeepers is 2,300. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 368,000 hours.

3. *Title:* Additional records to be made and retained by brokers or dealers in securities (31 CFR 1023.410 (Old Ref. 31 CFR 103.35) and 31 CFR 1010.410 (Old Ref. 103.38).

OMB Number: 1506–0053.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pubic Law 107–56.

Burden: The estimated number of recordkeepers is 8,300. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 830,000 hours.

4. *Title:* Additional records to be made and retained by casinos (31 CFR 1021.410 (Old Ref. 103.36) (except 31 CFR 1021.410(b)(10)) (Old Ref. except 103.36(b)(10)), and 31 CFR 1010.430 (Old Ref. 31 CFR 103.38) .

OMB Number: 1506–0054.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses and other for-profit institutions.

The burden for the action will be as follows:

31 CFR 1021.410(a)&(b)(1)–(8). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 100 hours, for a total estimated annual recordkeeping burden of 48,000.

31 CFR 1021.410(b)(9). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 3,600 hours.

31 CFR 1021.410(b)(11). The estimated number of recordkeepers is 62. The estimated number of transactions is 215,000 annually and the total estimated annual recordkeeping burden is 686 hours.

31 CFR 1021.410(c). The estimated number of recordkeepers is 480. The estimated annual recordkeeping burden per recordkeeper is 4 hours, for a total estimated annual recordkeeping burden of 1,920 hours. For a total estimated annual recordkeeping burden of 54,206 hours.

5. *Title:* Reports of transactions with foreign financial agencies 31 CFR 1010.360 (Old Ref. 31 CFR 103.25).[2]

OMB Number: 1506–0055.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 1. The estimated number of responses is 1, with a reporting burden of 1 hour per respondent, for a total annual recordkeeping burden of 1 hour.[3]

6. *Title:* Reports of certain domestic coin and currency transactions. 31 CFR 1010.370 (Old Ref. 31 CFR 103.26), 31 CFR 1010.410(d) (Old Ref. 31 CFR 103.33(d).

OMB Number: 1506–0056.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of respondents per year is 3,200. The estimated number of responses is 17,000, with a reporting burden of 19 minutes per response and a recordkeeping burden of 5 minutes per response. Total estimated annual recordkeeping burden is 6,800 hours.[4]

7. *Title:* Purchases of bank checks and drafts, cashier's checks, money orders and traveler's checks. 31 CFR 1010.415 (Old Ref. 31 CFR 103.29), 31 CFR 1010.430 (Old Ref. 31 CFR 103.38).

OMB Number: 1506–0057.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 60,900. The average burden per recordkeeper is 7.5 hours, for a total estimated annual recordkeeping burden of 456,750 hours.

8. *Title:* Records to be made and retained by financial institutions (31 CFR 1010.410 (Old Ref. 31 CFR 103.33) (except 1010.410(d) (Old Ref. 31 CFR 103.33(d)) and 31 CFR 1010.430, (Old Ref. 31 CFR 103.38).

OMB Number: 1506–0058.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

The burden for this action will be as follows:

31 CFR 1010.410(a)–(c). The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 50 hours, for a total estimated annual recordkeeping burden of 1,145,000 hours.

31 CFR 1010.410(e)–(f). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 16 hours, for a total estimated annual recordkeeping burden of 568,000.

31 CFR 1010.410(g). The estimated number of recordkeepers is 35,500. The estimated annual recordkeeping burden per recordkeeper is 12 hours, for a total estimated annual recordkeeping burden of 426,000, for a total of 2,139,000 hours.

9. *Title:* Additional records to be made and retained by banks (31 CFR 1020.410 (Old Ref. 31 CFR 103.34) and 31 CFR 1010.430 (Old Ref. 31 CFR 103.38).

OMB Number: 1506–0059.

Current Action: There is no change to the existing regulation.

Type of Review: Extension without change of a currently approved information collection.

Affected Public: Businesses or for-profit institutions, and non-profit institutions.

Burden: The estimated number of recordkeepers is 22,900. The estimated annual recordkeeping burden per recordkeeper is 100 hours for a total annual recordkeeping burden of 2,290,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget (OMB). Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

[2] Treasury may, by regulation, require specified financial institutions to report transactions by persons with designated foreign financial agencies.

[3] Should FinCEN issue regulations under this authority, it will provide a burden estimate specific to those regulations.

[4] Although the burden is stated as an annual burden in accordance with the Paperwork Reduction Act, the estimated annual burden is not intended to indicate that there is a geographic targeting order in effect throughout a year or in each year.

information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 31, 2011.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2011–14068 Filed 6–7–11; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, (202) 622–7381, Internal Revenue Service, room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877.

Form Number: 1099–A.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 386,356.

Estimated Time per Response: 10 min.

Estimated Total Annual Burden Hours: 61,817.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14039 Filed 6–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1096

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1096, Annual Summary and Transmittal of U.S. Information Returns.

DATES: Written comments should be received on or before August 8, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, (202) 622–7381, Internal Revenue Service, Room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Summary and Transmittal of U.S. Information Returns.

OMB Number: 1545–0108.

Form Number: 1096.

Abstract: Form 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS service centers. Under Internal Revenue Code section 6041 and related regulations, a separate Form 1096 is used for each type of return sent to the service center by the payer. It is used by IRS to summarize, categorize, and process the forms being filed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, Federal government, and State, local or tribal governments.

Estimated Number of Responses: 4,420,919.

Estimated Time per Response: 14 min.

Estimated Total Annual Burden Hours: 1,016,812.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14041 Filed 6–7–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0594]

Proposed Information Collection (Election to Apply Selected Reserve Services to Either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine the type of educational benefit payable to Selected Reservist members.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0594" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Election to Apply Selected Reserve Services to Either Montgomery GI Bill-Active Duty or to the Montgomery GI Bill-Selected Reserve.

OMB Control Number: 2900–0594.

Type of Review: Extension of a previously approved collection.

Abstract: Reservist who is participant in the Montgomery GI Bil-Active Duty and served on active duty for two years followed by six years in the Selected Reserve must elect to apply the selected reserved credit either toward the Montgomery GI Bill-Active Duty or toward the Montgomery GI Bill-Selected Reserve benefits. Reservists must make this election in writing, which will take effect when the individual either negotiates a check or receives education benefits via direct deposit or electronic funds transfer under the program elected. VA uses the election to determine which benefit is payable based on the individual's Selected Reserve service.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,667 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 8,000.

Dated: June 3, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–14117 Filed 6–7–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New; VA Form 10–0510]

Proposed Information Collection (Nonprofit Research and Education Corporations (NPCs) Data Collection) Activity; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed collection in use without an OMB number, and allow 60 days for public comment in response to the notice. This notice solicits comments on information

needed to monitor the progress of NPC programs.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 8, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to "2900–New (VA Form 10–0510)" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or Fax (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles: Nonprofit Research and Education Corporations (NPCs) Data Collection:

a. Nonprofit Research and Education Corporations (NPCs) PC Annual Report Template, VA Form 10–0510.

b. Nonprofit Research and Education Corporations (NPCs) Audit Actions Items Remediation Plans, VA Form 10–0510a.

c. Nonprofit Program Office (NPPO) Internal Control Questionnaire, VA Form 10–0510b.

d. Nonprofit Program Office (NPPO) Operations Oversight Questionnaire, VA Form 10–0510c.

OMB Control Number: 2900–New.

Type of Review: In use without an OMB number.

Abstracts:

a. VA Form 10–0510 is used to monitor the progress of NPC programs.

b. VA Form 10–0510a is used to review the NPC's resolutions for audit deficiencies and recommendations.

c. VA Form 10–0510b is used to conduct reviews, audits, and investigations of the NPCs. The questionnaire will also be used to uncover weaknesses and lapses in internal controls.

d. VA Form 10–0510c, or portions of it, will be used to conduct operational reviews of the NPCs. The major objective of the questionnaire is to uncover operating problems and areas that need improvement.

Affected Public: Federal Government.

Estimated Annual Burden:

a. Nonprofit Research and Education Corporations (NPCs) PC Annual Report Template, VA Form 10–0510—301 hours.

b. Nonprofit Research and Education Corporations (NPCs) Audit Actions Items Remediation Plans, VA Form 10–0510a—84 hours.

c. Nonprofit Program Office (NPPO) Internal Control Questionnaire, VA Form 10–0510b—387 hours.

d. Nonprofit Program Office (NPPO) Operations Oversight Questionnaire, VA Form 10–0510c—129 hours.

Estimated Average Burden per Respondent:

a. Nonprofit Research and Education Corporations (NPCs) PC Annual Report Template, VA Form 10–0510—210 minutes.

b. Nonprofit Research and Education Corporations (NPCs) Audit Actions Items Remediation Plans, VA Form 10–0510a—120 minutes.

c. Nonprofit Program Office (NPPO) Internal Control Questionnaire, VA Form 10–0510b—270 minutes.

d. Nonprofit Program Office (NPPO) Operations Oversight Questionnaire, VA Form 10–0510c—90 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. Nonprofit Research and Education Corporations (NPCs) PC Annual Report Template, VA Form 10–0510—86.

b. Nonprofit Research and Education Corporations (NPCs) Audit Actions Items Remediation Plans, VA Form 10–0510a—42.

c. Nonprofit Program Office (NPPO) Internal Control Questionnaire, VA Form 10–0510b—86.

d. Nonprofit Program Office (NPPO) Operations Oversight Questionnaire, VA Form 10–0510c—86.

Dated: June 3, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–14118 Filed 6–7–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (DBQs—Group 2)]

Agency Information Collection (Disability Benefits Questionnaires—Group 2) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 8, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (DBQs—Group 2)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to "OMB Control No. 2900–New (DBQs—Group 2)."

Titles:

a. Arteries and Veins Conditions (Vascular Diseases including Varicose Veins) Disability Benefits Questionnaire, VA Form 21–0960A–2.

b. Hypertension Disability Benefits Questionnaire, VA Form 21–0960A–3.

c. Non-ischemic Heart Disease (including Arrhythmias and Surgery, Disability Benefits Questionnaire, VA Form 21–0960A–4.

d. Diabetic Peripheral Neuropathy (Diabetic Sensory-Motor Peripheral

Neuropathy), Disability Benefits Questionnaire, VA Form 21–0960C–4.

e. Diabetes Mellitus Disability Benefits Questionnaire, VA Form 21–0960E–1.

f. Scar/Disfigurement Disability Benefits Questionnaire, VA Form 21–0960F–1

g. Skin Diseases Disability Benefits Questionnaire, VA Form 21–0960F–2.

h. Amputations Disability Benefits Questionnaire, VA Form 21–0960M–1.

i. Ankle Conditions Disability Benefits Questionnaire, VA Form 21–0960M–2.

j. Elbow and Forearm Conditions Disability Benefits Questionnaire, VA Form 21–0960M–4.

k. Flatfoot (PES PLANUS) Disability Benefits Questionnaire, VA Form 21–0960M–5.

l. Foot Miscellaneous (other than flatfoot/PES PLANUS), Disability Benefits Questionnaire, VA Form 21–0960M–6.

m. Hand and Finger Conditions Disability Benefits Questionnaire, VA Form 21–0960M–7.

n. Hip and Thigh Conditions Disability Benefits Questionnaire, VA Form 21–0960M–8.

o. Knee and Lower Leg Conditions Disability Benefits Questionnaire, VA Form 21–0960M–9.

p. Muscle Injuries Disability Benefits Questionnaire, VA Form 21–0960M–10.

q. Shoulder and Arm Conditions Disability Benefits Questionnaire, VA Form 21–0960M–12.

r. Temporomandibular Joint (TMJ) Conditions Disability Benefits Questionnaire, VA Form 21–0960M–15.

s. Wrist Conditions Disability Benefits Questionnaire, VA Form 21–0960M–16.

t. Eye Conditions Disability Benefits Questionnaire, VA Form 21–0960N–2.

OMB Control Number: 2900–New (DBQs—Group 2).

Type of Review: New collection.

Abstract: Data collected on VA Form 21–0960 series will be used obtain information from claimants treating physician that is necessary to adjudicate a claim for disability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 23, 2011, at pages 16478–16479.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 21–0960A–2—10,000.

b. VA Form 21–0960A–3—12,500.

c. VA Form 21–0960A–4—10,000.

d. VA Form 21–0960C–4—37,500.

e. VA Form 21–0960E–1—18,750.

f. VA Form 21–0960F–1— 6,250.

g. VA Form 21–0960F–2—6,250.

h. VA Form 21–0960M–1—12,500.

i. VA Form 21–0960M–2—15,000.

j. VA Form 21–0960M–4—10,000.

k. VA Form 21–0960M–5—12,500.

l. VA Form 21–0960M–6—7,500.

m. VA Form 21–0960M–7—15,000.

n. VA Form 21–0960M–8—25,000.

o. VA Form 21–0960M–9—25,000.

p. VA Form 21–0960M–10—15,000.

q. VA Form 21–0960M–12—25,000.

r. VA Form 21–0960M–15—3,750.

s. VA Form 21–0960M–16—20,000.

t. VA Form 21–0960N–2—30,000.

Estimated Average Burden Per Respondent:

a. VA Form 21–0960A–2—30 minutes.

b. VA Form 21–0960A–3—15 minutes.

c. VA Form 21–0960A–4—30 minutes.

d. VA Form 21–0960C–4—30 minutes.

e. VA Form 21–0960E–1—15 minutes.

f. VA Form 21–0960F–1—15 minutes.

g. VA Form 21–0960F–2—15 minutes.

h. VA Form 21–0960M–1—30 minutes.

i. VA Form 21–0960M–2—30 minutes.

j. VA Form 21–0960M–4—30 minutes.

k. VA Form 21–0960M–5—15 minutes.

l. VA Form 21–0960M–6—15 minutes.

m. VA Form 21–0960M–7—30 minutes.

n. VA Form 21–0960M–8—30 minutes.

o. VA Form 21–0960M–9—30 minutes.

p. VA Form 21–0960M–10—30 minutes.

q. VA Form 21–0960M–12—30 minutes.

r. VA Form 21–0960M–15—15 minutes.

s. VA Form 21–0960M–16—30 minutes.

t. VA Form 21–0960N–2—45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 21–0960A–2—20,000.

b. VA Form 21–0960A–3—50,000.

c. VA Form 21–0960A–4—20,000.

d. VA Form 21–0960C–4—75,000.

e. VA Form 21–0960E–1—75,000.

f. VA Form 21–0960F–1—25,000.

g. VA Form 21–0960F–2—25,000.

h. VA Form 21–0960M–1—25,000.

i. VA Form 21–0960M–2—30,000.

j. VA Form 21–0960M–4—20,000.

k. VA Form 21–0960M–5—50,000.

l. VA Form 21–0960M–6—30,000.

m. VA Form 21–0960M–7—30,000.

n. VA Form 21–0960M–8—50,000.

o. VA Form 21–0960M–9—50,000.

p. VA Form 21–0960M–10—30,000.

q. VA Form 21–0960M–12—50,000.

r. VA Form 21–0960M–15—15,000.

s. VA Form 21–0960M–16—40,000.

t. VA Form 21–0960N–2—40,000.

Dated: June 3, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–14119 Filed 6–7–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 232, 240, 249, *et al.*
Nationally Recognized Statistical Rating Organizations; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, 249, and 249b

[Release No. 34–64514; File No. S7–18–11]

RIN 3235–AL15

Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") and to enhance oversight, the Securities and Exchange Commission ("Commission") is proposing amendments to existing rules and new rules that would apply to credit rating agencies registered with the Commission as nationally recognized statistical rating organizations ("NRSROs"). In addition, in accordance with the Dodd-Frank Act, the Commission is proposing a new rule and form that would apply to providers of third-party due diligence services for asset-backed securities. Finally, the Commission is proposing amendments to existing rules and a new rule that would implement a requirement added by the Dodd-Frank Act that issuers and underwriters of asset-backed securities make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter. The Commission is requesting comment on the proposed rule amendments and new rules.

DATES: Comments should be received on or before August 8, 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.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–18–11 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 Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–18–11. 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 Internet Web site (*http://www.sec.gov/rules.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549. 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 publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Deputy Associate Director, at (202) 551–5521; Randall W. Roy, Assistant Director, at (202) 551–5522; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; Rose Russo Wells, Senior Counsel, at (202) 551–5527; Joseph I. Levinson, Special Counsel, at (202) 551–5598; or Timothy C. Fox, Special Counsel, at (202) 551–5687; Division of Trading and Markets; or, with respect to the proposals for issuers and underwriters of asset-backed securities, Eduardo A. Aleman, Special Counsel, Division of Corporation Finance at (202) 551–3430; Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission, with respect to NRSROs, is proposing amendments to rules 17 CFR 232.101 ("Rule 101 of Regulation S–T"), 17 CFR 232.201 ("Rule 201 of Regulation S–T'"), 17 CFR 240.17g–1 ("Rule 17g–1"), 17 CFR 240.17g–2 ("Rule 17g–2"), 17 CFR 240.17g–3 ("Rule 17g–3"), 17 CFR 240.17g–5 ("Rule 17g–5"), 17 CFR 240.17g–6 ("Rule 17g–6"), 17 CFR 240.17g–7 ("Rule 17g–7"), 17 CFR 249b.300 ("Form NRSRO"), and proposing new rules 17 CFR 240.17g–8 ("Rule 17g–8") and 17 CFR 240.17g–9 ("Rule 17g–9").

In addition, the Commission, with respect to providers of third-party due diligence services for asset-backed securities, is proposing new rules 17 CFR 240.17g–10 ("Rule 17g–10") and 17 CFR 249b.400 ("Form ABS Due Diligence-15E").

Finally, the Commission, with respect to issuers and underwriters of asset-backed securities, is proposing amendments to 17 CFR 232.314 ("Rule 314 of Regulation S–T") and 17 CFR 249.1400 ("Form ABS 15G"), and proposing new rule 17 CFR 240.15Ga–2 ("Rule 15Ga–2").

I. Background

Title IX, Subtitle C of the Dodd-Frank Act,[1] "Improvements to the Regulation of Credit Rating Agencies," among other things, establishes new self-executing requirements applicable to NRSROs, requires certain studies,[2] and requires that the Commission adopt rules applicable to NRSROs in a number of areas.[3] The NRSRO provisions in the

[1] Public Law 111–203, 124 Stat. 1376, H.R. 4173 (July 21, 2010).

[2] *See* Public Law 111–203 §§ 939, 939D–939F. On December 17, 2010, the Commission issued a request for comments to inform a required study on standardizing credit ratings terminology. *See Credit Rating Standardization Study,* Securities Exchange Act of 1934 ("Exchange Act") Release No. 34–63573 (December 17, 2010). On May 10, 2011, the Commission issued a request for comments to assist it in carrying out a required study on, among other matters, the feasibility of establishing a system in which a public or private utility or a self-regulatory organization assigns NRSROs to determine credit ratings for structured finance products. *See Solicitation of Comment to Assist in Study on Assigned Credit Ratings,* Exchange Act Release No. 64456 (May 10, 2011). The Commission also is required to conduct a study of the independence of NRSROs and how that independence affects the ratings issued by NRSROs. The Comptroller General of the United States is required to conduct a study on alternative means for compensating NRSROs in order to create incentives to provide more accurate credit ratings as well as a study on the feasibility and merits of creating an independent professional organization for rating analysts employed by NRSROs.

[3] *See* Public Law 111–203 §§ 931–939H. In addition, Title IX, Subtitle D, "Improvements to the Asset-Backed Securitization Process," contains Section 943, which provides that the Commission shall adopt rules, within 180 days, requiring an NRSRO to include in any report accompanying a credit rating of an asset-backed security a description of the representations, warranties, and enforcement mechanisms available to investors and how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities. *See* Public Law 111–203 § 943. On January 20, 2011, the Commission adopted Rule 17g– 7 to implement Section 943. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Securities Act of 1933 ("Securities Act") Release No. 9175 (Jan. 20, 2011), 76 FR 4489 (Jan. 26, 2011) and 17 CFR 240.17g–7. Prior to enactment of the Dodd-Frank Act and the adoption of Rule 17g–7, the Commission proposed a different rule to be codified at 17 CFR 240.17g–7. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 57967 (June 16, 2008), 73 FR 36212 (June 25, 2008). This proposed rule would have required an NRSRO to publish a report containing certain information with the publication of a credit rating for a structured finance product or, as an alternative, use ratings symbols for structured finance products that differentiate them from the credit ratings for other types of debt securities. *Id.* In November 2009, the Commission announced it was deferring consideration of action on the proposal and separately proposed a different rule to be codified at 17 CFR 240.17g–7 that would have required an NRSRO to annually disclose certain information. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations* Exchange Act Release No. 61051 (Nov. 23, 2009), 74 FR 63866 (Dec. 4, 2009). Although the Commission adopted Rule 17g–7 on January 20, 2011 to implement

Dodd-Frank Act augment the Credit Rating Agency Reform Act of 2006 (the "Rating Agency Act of 2006"), which established a registration and oversight program for NRSROs through self-executing provisions added to the Exchange Act and implementing rules adopted by the Commission under the Exchange Act as amended by the Rating Agency Act of 2006.[4] Title IX, Subtitle C of the Dodd-Frank Act also provides that the Commission shall prescribe the format of a certification that providers of third-party due diligence services would need to provide to each NRSRO producing a credit rating for an asset-backed security to which the due diligence services relate.[5] Finally, Title IX, Subtitle C of the Dodd-Frank Act establishes a new requirement for issuers and underwriters of asset-backed securities to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[6]

II. The Proposed New Rules and Rule Amendments

The Commission's proposed rule amendments and proposed new rules to implement Title IX, Subtitle C of the Dodd-Frank Act are described below.[7]

A. Internal Control Structure

1. Self-Executing Requirement

Section 932(a)(2)(B) of the Dodd-Frank Act added paragraph (3) to Section 15E(c) of the Exchange Act.[8] Section 15E(c)(3)(A) requires an NRSRO to "establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe, by rule."[9] While Section 15E(c)(3)(A) provides that the Commission "may" prescribe factors an NRSRO would need to take into consideration with respect to an internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings (an "internal control structure"), the requirement that an NRSRO "establish, maintain, enforce, and document an effective internal control structure" is self-executing.[10] Consequently, an NRSRO must adhere to this self-executing provision irrespective of whether the Commission prescribes factors the NRSRO must take into consideration.[11]

The Commission preliminarily believes it would be appropriate at this time to defer prescribing factors an NRSRO must take into consideration with respect to its internal control structure. Deferring rulemaking would provide the Commission with the opportunity, through the NRSRO examination process and, as discussed below, the submission of annual reports by the NRSROs, to review how the NRSROs have complied with this self-executing requirement.[12] This review could inform any future rulemaking the Commission may initiate. Nonetheless, the Commission is requesting extensive comment below on whether it would be appropriate as part of this rulemaking to prescribe factors. Based on the comments received, the Commission may decide to prescribe by rule or identify through guidance the factors an NRSRO would need to consider with respect to its internal control structure.

Request for Comment

The Commission generally requests comment on all aspects of Section 15E(c)(3)(A) of the Exchange Act. The Commission also seeks comment on the following:

1. Should the Commission, as part of this rulemaking initiative, prescribe factors that an NRSRO would need to take into consideration when establishing, maintaining, enforcing, and documenting an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings? For example, can the objectives of the self-executing requirement in Section 15E(c)(3)(A) of the Exchange Act be adequately achieved by NRSROs if the Commission does not prescribe factors?

Section 943 of the Dodd-Frank Act, the November 23, 2009 proposal remains outstanding.

[4] *See* Public Law 109–291 (2006). The Rating Agency Act of 2006, among other things, amended Section 3 of the Exchange Act to add definitions, added Section 15E to the Exchange Act to establish self-executing requirements on NRSROs and provide the Commission with the authority to implement a registration and oversight program for NRSROs, amended Section 17 of the Exchange Act to provide the Commission with recordkeeping, reporting, and examination authority over NRSROs, and amended Section 21B(a) of the Exchange Act to provide the Commission with the authority to assess penalties in administrative proceedings instituted under Section 15E of the Exchange Act. *See* Public Law 109–291 §§ 3 and 4 and 15 U.S.C. 78c, 78o–7, 78q, and 78u–2. The Commission adopted rules to implement a registration and oversight program for NRSROs in June 2007. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 55857 (June 5, 2007), 72 FR 33564 (June 18, 2007). The implementing rules were Form NRSRO, Rule 17g–1, Rule 17g–2, Rule 17g–3, Rule 17g–4, Rule 17g–5, and Rule 17g–6. The Commission has twice adopted amendments to some of these rules. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 59342 (Feb. 2, 2009), 74 FR 6456 (Feb. 9, 2009) and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 61050 (Nov. 23, 2009), 74 FR 63832 (Dec. 4, 2009). The Commission also has proposed further amendments to these rules, which remain pending. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63866 (Dec. 4, 2009). In addition, as noted above, the Commission adopted Rule 17g–7 on January 20, 2011.

[5] *See* Public Law 111–203 § 932(a)(8) adding new paragraph (s)(4)(C) to Section 15E of the Exchange Act. 15 U.S.C. 78o–7(s)(4)(C).

[6] *See* Public Law 111–203 § 932(a)(8) adding new paragraph (s)(4)(A) to Section 15E of the Exchange Act. 15 U.S.C. 78o–7(s)(4)(A).

[7] As used throughout this release, the term "category" of credit rating refers to a distinct level in a rating scale represented by a unique symbol, number, or score. For example, if a rating scale consists of symbols (*e.g.,* AAA, AA, A, BBB, BB, B, CCC, CC, and C), each unique symbol would represent a category in the rating scale. Similarly, if a rating scale consists of numbers (*e.g.,* 1, 2, 3, 4, 5, 6, 7, 8, and 9), each number would represent a category in the rating scale. Each category also represents a "notch" in the rating scale. In addition, some NRSRO rating scales attach additional symbols or numbers to the symbols representing categories in order to denote gradations within a category. For example, a rating scale may indicate gradations within a category by attaching a plus or a minus or a number to a rating symbol. For example, AA+, AA, and AA− or AA1, AA2, and AA3 would be three gradations within the AA category. If a rating scale has gradations within a category, each category and gradation within a category would constitute a "notch" in the rating scale. For example, the following symbols would each represent a notch in the rating scale in descending order: AAA, AA+, AA, AA−, A+, A, A−, BBB+, BBB, BBB−, BB+, BB, BB−, CCC+, CCC, CCC−, CC, C and D. Furthermore, for the purposes of this release, changing a credit rating (*e.g.,* upgrading or downgrading the credit rating) means assigning a credit rating at a different notch in the rating scale (*e.g.,* downgrading an obligor assigned an AA rating to an AA− rating or an A+ rating). A "rating action" for the purposes of this release does not necessarily mean changing a credit rating. A rating action is taken when an NRSRO issues an expected or preliminary credit rating before it issues an initial credit rating, issues an initial credit rating, upgrades an existing credit rating, downgrades an existing credit rating (including to a default category), places an existing credit rating on credit watch or review (meaning the NRSRO is actively evaluating whether to change the credit rating), affirms (or confirms) an existing credit rating (meaning the NRSRO announces that it will not change the credit rating), or withdraws a credit rating.

[8] *See* Public Law 111–203 § 932(a)(2)(B) and 15 U.S.C. 78o–7(c)(3)(A).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Section 923(a)(8) of the Dodd-Frank Act struck existing Section 15E(p) of the Exchange Act, which related to the date of applicability of the Rating Agency Act of 2006 and added new Section 15E(p). *See* Public Law 111–203 § 932(a)(8). New Section 15E(p)(3) of the Exchange Act requires, among other things, the Commission staff to conduct an examination of each NRSRO at least annually. *See* 15 U.S.C. 78o–7(p)(3). The Commission staff intends to conduct such annual statutory examinations on a cycle based on the Commission's fiscal year. The staff intends to conduct the first annual statutory examination of a newly registered NRSRO in the annual cycle following its registration.

2. Alternatively, should the Commission defer rulemaking in order to review through examination and monitoring the effectiveness of the internal control structures each NRSRO establishes, maintains, enforces, and documents pursuant to Section 15E(c)(3)(A) of the Exchange Act? For example, would it be more appropriate for the Commission to evaluate through examination and the annual reports discussed below in Section II.A.3 of this release whether there is a need to prescribe factors and, if such a need is identified, incorporate in rulemaking or guidance best practices identified through examination and NRSRO reporting?

3. If appropriate to prescribe factors now, should the factors address all elements of the self-executing requirement in Section 15E(c)(3)(A) of the Exchange Act (*i.e.,* the *establishment, maintenance, enforcement,* and *documentation* of the internal control structure) or should the factors focus on the design (*i.e., establishment*) of the internal control structure or one of the other elements or a combination of some of the elements?

4. If appropriate to prescribe factors now for the *establishment* of an internal control structure, what should those factors be? For example, should the Commission prescribe any of the factors identified in the sub-paragraphs below? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.

a. Controls reasonably designed to ensure that a newly developed methodology or proposed update to an in-use methodology for determining credit ratings is subject to an appropriate review process (*e.g.,* by persons who are independent from the persons that developed the methodology or methodology update) and to management approval prior to the new or updated methodology being employed by the NRSRO to determine credit ratings; [13]

b. Controls reasonably designed to ensure that a newly developed methodology or update to an in-use methodology for determining credit ratings is disclosed to the public for consultation prior to the new or updated methodology being employed by the NRSRO to determine credit ratings, that the NRSRO makes comments received as part of the consultation publicly available, and that the NRSRO considers the comments before implementing the methodology;

c. Controls reasonably designed to ensure that in-use methodologies for determining credit ratings are periodically reviewed (*e.g.,* by persons who are independent from the persons who developed and/or use the methodology) in order to analyze whether the methodology should be updated;

d. Controls reasonably designed to ensure that market participants have an opportunity to provide comment on whether in-use methodologies for determining credit ratings should be updated, that the NRSRO makes any such comments received publicly available, and that the NRSRO considers the comments;

e. Controls reasonably designed to ensure that newly developed or updated quantitative models proposed to be incorporated into a credit rating methodology are evaluated and validated prior to being put into use;

f. Controls reasonably designed to ensure that quantitative models incorporated into in-use credit rating methodologies are periodically reviewed and back-tested;

g. Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of a class of obligors, securities, or money market instruments the NRSRO has not previously rated to determine whether the NRSRO has sufficient competency, access to necessary information, and resources to rate the type of obligor, security, or money market instrument;

h. Controls reasonably designed to ensure that an NRSRO engages in analysis before commencing the rating of an "exotic" or "bespoke" type of obligor, security, or money market instrument to review the feasibility of determining a credit rating;

i. Controls reasonably designed to ensure that measures (*e.g.,* statistics) are used to evaluate the performance of credit ratings as part of the review of in-use methodologies for determining credit ratings to analyze whether the methodologies should be updated or the work of the analysts employing the methodologies should be reviewed;

j. Controls reasonably designed to ensure that, with respect to determining credit ratings, the work and conclusions of the lead credit analyst developing an initial credit rating or conducting surveillance on an existing credit rating is reviewed by other analysts, supervisors, or senior managers before a rating action is formally taken (*e.g.,* having the work reviewed through a rating committee process);

k. Controls reasonably designed to ensure that a credit analyst documents the steps taken in developing an initial credit rating or conducting surveillance on an existing credit rating with sufficient detail to permit an after-the-fact review or internal audit of the rating file to analyze whether the analyst adhered to the NRSRO's procedures and methodologies for determining credit ratings;

l. Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or internal audits of rating files to analyze whether analysts adhere to the NRSRO's procedures and methodologies for determining credit ratings; or

m. Any other factors that commenters identify and explain.

5. If appropriate to prescribe factors now for the *maintenance* of an internal control structure, what should those factors be? For example, should the Commission prescribe any of the factors identified in the sub-paragraphs below? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.

a. Controls reasonably designed to ensure that the NRSRO conducts periodic reviews of whether it has devoted sufficient resources to implement and operate the documented internal control structure as designed;

b. Controls reasonably designed to ensure that the NRSRO conducts periodic reviews or ongoing monitoring to evaluate the effectiveness of the internal control structure and whether it should be updated;

c. Controls designed to ensure that any identified deficiencies in the internal control structure are assessed and addressed on a timely basis;

d. Any other factors that commenters identify and explain.

6. If appropriate to prescribe factors now for the *enforcement* of an internal

[13] Section 15E(t)(3)(A) of the Exchange Act contains a self-executing provision requiring that the board of directors of the NRSRO shall "oversee" the "establishment, maintenance, and enforcement of policies and procedures for determining credit ratings." *See* 15 U.S.C. 78o–7(t)(3)(A). At the same time, Section 15E(r) of the Exchange Act requires the Commission to adopt rules "to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models" that are approved by the board of the NRSRO. *See* 15 U.S.C. 78o–7(r)(1)(A).

control structure, what should those factors be? For example, should the Commission prescribe any of the factors identified in the sub-paragraphs below? In analyzing these potential factors, commenters should address the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any of the factors, as well as the potential effectiveness of the controls and any practical issues related to implementing them.

a. Controls designed to ensure that additional training is provided or discipline taken with respect to employees who fail to adhere to requirements imposed by the internal control structure;

b. Controls designed to ensure that a process is in place for employees to report failures to adhere to the internal control structure; or

c. Any other factors that commenters identify and explain?

7. If appropriate to prescribe factors now for the *documentation* of an internal control structure, what should those factors be? For example, should there be a factor relating to the level of written detail about the internal control structure that should be documented? Are there other factors that should be considered? What potential advantages, disadvantages, benefits, and costs would result if the Commission prescribed any such factors?

8. Identify any other factors that an NRSRO should consider when establishing, maintaining, enforcing, and documenting an internal control structure. Explain the utility of any factors identified as well as the potential advantages, disadvantages, benefits, and costs that could result if the Commission prescribed any such factors.

2. Proposed Amendment to Rule 17g–2

As noted above, Section 15E(c)(3)(A) of the Exchange Act requires an NRSRO, among other things, to *document* its internal control structure.[14] Thus, the statute itself requires the NRSRO to make this record.[15] However, the statute does not prescribe how an NRSRO would need to maintain this record.[16] The Commission preliminarily believes this record should be subject to the same recordkeeping requirements applicable to other records an NRSRO is required to retain pursuant to the NRSRO recordkeeping rule—Rule 17g–2.[17] Consequently, the Commission proposes adding new paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO, among other things, must document pursuant to Section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[18] As a result, the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g–2 would apply to the documented internal control structure.[19]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (b)(12) of Rule 17g–2.

3. Proposed Amendments to Rule 17g–3

Section 15E(c)(3)(B) of the Exchange Act provides that the Commission shall prescribe rules requiring an NRSRO to "submit" an annual internal controls report to the Commission, which shall contain: (1) A description of the responsibility of management in establishing and maintaining an effective internal control structure; (2) an assessment of the effectiveness of the internal control structure; and (3) the attestation of the chief executive officer ("CEO") or equivalent individual.[20] Rule 17g–3 requires an NRSRO to furnish annual reports to the Commission.[21] In particular, paragraph (a) of Rule 17g–3 requires an NRSRO to furnish five or, in some cases, six separate reports within 90 days after the end of the NRSRO's fiscal year and identifies the reports that must be furnished.[22] The first report—the NRSRO's financial statements—must be audited; the remaining reports may be unaudited.[23] Paragraph (b) of Rule 17g–3 provides that the NRSRO must attach to the reports a signed statement by a duly authorized person that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information contained in the reports.[24]

The Commission proposes amending paragraphs (a) and (b) of Rule 17g–3 to implement the rulemaking mandated by Section 15E(c)(3)(B) of the Exchange Act.[25] The proposed amendment would add a new paragraph (a)(7) to require an NRSRO to file an additional report—the report on the NRSRO's internal control structure—with its annual submission of reports pursuant to Rule 17g–3.[26] As discussed above in Section II.A.1 of this release, the Commission preliminarily believes it would be appropriate at this time to defer prescribing factors an NRSRO must take into consideration with respect to its internal control

[14] *See* 15 U.S.C. 78o–7(c)(3)(A).

[15] *Id.*

[16] *Id.* For example, it does not prescribe how long the document must be retained.

[17] 17 CFR 240.17g–2(c), (d), (e), and (f). Section 17(a)(1) of the Exchange Act requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1). The Commission preliminarily believes it would be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act to apply the record retention requirements of Rule 17g–2 to the internal control structure required pursuant to Section 15E(c)(3)(A) of the Exchange Act (15 U.S.C. 78o–7(c)(3)(A)). *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007) ("The Commission designed [Rule 17g–2] based on its experience with recordkeeping rules for other regulated entities. These other books and records rules have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws. Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act and the rules thereunder.") (footnotes omitted).

[18] *See* proposed new paragraph (b)(12) of Rule 17g–2.

[19] *See* 17 CFR 240.17g–2(c), (d), (e) and (f). Paragraph (c) of Rule 17g–2 requires an NRSRO to retain the records identified in paragraphs (a) and (b) for three years after the date the record is made or received. 17 CFR 240.17g–2(c). Paragraph (d) requires, among other things, that an NRSRO maintain each record identified in paragraphs (a) and (b) in a manner that makes the original record or copy easily accessible to the principal office of the NRSRO. 17 CFR 240.17g–2(d). Paragraph (e) sets forth the requirements that apply when an NRSRO uses a third-party custodian to maintain its records. 17 CFR 240.17g–2(e). Paragraph (f) requires an NRSRO to promptly furnish the Commission with legible, complete, and current copies, and, if specifically requested, English translations, of the records identified in paragraphs (a) and (b), or any other records of the NRSRO subject to examination under Section 17(b) of the Exchange Act. *See* 17 CFR 240.17g–2(f); *see also* 15 U.S.C. 78q(b).

[20] *See* 15 U.S.C. 78o–7(c)(3)(B)(i)–(iii).

[21] *See* 17 CFR 240.17g–3.

[22] *See* 17 CFR 240.17g–3(a)(1)–(6).

[23] *Id.*

[24] *See* 17 CFR 240.17g–3(b).

[25] *See* 15 U.S.C. 78o–7(c)(3)(B)(i)–(iii). In addition, as a technical amendment, the Commission proposes to amend the title of Rule 17g–3 to replace the words "financial reports" with the words "financial and other reports." The Commission notes that the report identified in paragraph (a)(6) of Rule 17g–3, the proposed internal control report, and the compliance report discussed below in Section II.K of this release are not financial in nature. The Commission also proposes to add the word "filed" in the title of Rule 17g–3. As discussed below in Section II.M.1 of this release, the Commission is proposing amendments to Rules 17g–1 and 17g–3 to treat certain submissions of Form NRSRO and the Rule 17g–3 annual reports as being "filed" as opposed to being "furnished" to conform to amendments the Dodd-Frank Act made to Section 15E of the Exchange Act. *See* Public Law 111–203 § 932(a). Specifically, the reports identified in paragraphs (a)(1), (2), (3), (4), (5), (7) and (8) of Rule 17g–3 would be "filed" and the report identified in paragraph (a)(6) would be "furnished."

[26] *See* proposed new paragraph (a)(7) of Rule 17g–3.

structure. For similar reasons, the Commission preliminarily believes it would be appropriate at this time to implement Sections 15E(c)(3)(B)(i) and (ii) of the Exchange Act through rule text that closely mirrors the statute.[27] Consequently, proposed new paragraph (a)(7) would require that the internal control report contain: (1) a description of the responsibility of management in establishing and maintaining an effective internal control structure; and (2) an assessment by management of the effectiveness of the internal control structure.[28] As is the case with the reports currently identified in paragraphs (a)(2) through (a)(6) of Rule 17g–3, the report identified in new paragraph (a)(7) would be unaudited.[29] While the proposed rule text closely mirrors the statutory text, the Commission is requesting extensive comment below on whether it would be appropriate as part of this rulemaking to provide more explanation in terms of the standards to use in preparing the internal controls report and providing information in the report. Based on the comments received, the Commission may decide to prescribe by rule or identify through guidance such standards.

Section 15E(c)(3)(B)(iii) of the Exchange Act provides that the annual internal controls report must contain an attestation of the NRSRO's CEO, or equivalent individual.[30] Accordingly, the Commission proposes amending paragraph (b) of Rule 17g–3 to require that the NRSRO's chief executive officer, or, if the firm does not have a CEO, an individual performing similar functions, provide a signed statement that would need to be attached to the report.[31]

[27] *See* 15 U.S.C. 78o–7(c)(3)(B)(i) and (ii).

[28] *Compare* 15 U.S.C. 78o–7(c)(3)(B)(i) and (ii) with proposed new paragraphs (a)(7)(i) and (ii) of Rule 17g–3.

[29] *See* proposed new paragraph (a)(7) of Rule 17g–3.

[30] 15 U.S.C. 78o–7(c)(3)(B)(iii).

[31] *See* proposed amendments to paragraph (b) of Rule 17g–3. In particular, the Commission proposes re-organizing existing paragraph (b) of Rule 17g–3 into paragraphs (b)(1) and (b)(2). Paragraph (b)(1) would contain the current requirement that the NRSRO must attach to each of the annual reports required pursuant to paragraphs (a)(1)-(6) a signed statement by a duly authorized person associated with the NRSRO stating that the person has responsibility for the financial reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information required to be contained in the report. Paragraph (b)(2) of Rule 17g–3 would require that the report on the NRSRO's internal control structure be attested to by the NRSRO's CEO or an individual performing similar functions. *See* proposed paragraph (b)(2) of Rule 17g–3.

Request for Comment

The Commission generally requests comment on all aspects of these proposed amendments to paragraphs (a) and (b) of Rule 17g–3. The Commission also seeks comment on the following:

1. Is the requirement to provide a description of the responsibility of management in establishing and maintaining an effective internal control structure sufficiently explicit? If not, how should the Commission modify proposed paragraph (a)(7) of Rule 17g–3 to make the requirement more understandable? For example, should the Commission provide guidance on how an NRSRO must describe the responsibility of management in establishing and maintaining an effective internal control structure? If so, what should that guidance be? For example, are there existing frameworks that such guidance could be modeled on?

2. In terms of establishing an effective internal control structure, what level of NRSRO management should have primary responsibility for the design of the internal control structure and what level of management should supervise the design of the internal control structure? For example, should managers with direct responsibility for supervising the personnel who use the policies, procedures, and methodologies for determining credit ratings and the personnel who conduct compliance reviews for adherence to those policies, procedures, and methodologies design the internal control structure and a committee of the NRSRO's most senior managers supervise the design of the internal control structure? Should other management or non-management levels of the NRSRO have responsibility for either of these functions? In addition, Section 15E(t)(3)(C) of the Exchange Act provides that the board of directors of the NRSRO shall "oversee" the "effectiveness of the internal control system with respect to the policies and procedures for determining credit ratings."[32] How should this statutorily mandated board responsibility be integrated with the responsibility of the NRSRO's management to establish an effective internal control structure?

3. In terms of establishing an effective internal control structure, should the Commission define the term "internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings"? In terms of establishing an effective internal control structure, should the Commission further define the term "internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings"? If so, how should that term be further defined?[33] Provide suggested rule text and supporting analysis.

4. In terms of establishing an effective internal control structure, should the Commission prescribe a standard in terms of the design? If so, what standard would be appropriate? For example, should the internal control structure be "reasonably designed" to achieve its objectives (a standard required by Sections 15E(g) and (h) of the Exchange Act with respect to policies and procedures of an NRSRO to address, respectively, the misuse of material nonpublic information and conflicts of interest)?[34] Conversely, is the proposed requirement that the internal control structure be "effective" a sufficient standard?

5. In terms of maintaining an effective internal control structure, what level of NRSRO management should have primary responsibility for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure? For example, should managers with direct responsibility for supervising the personnel who use the policies, procedures, and methodologies for determining credit ratings and the personnel who conduct compliance reviews for adherence to those policies, procedures, and methodologies have day-to-day responsibility for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure? Should other management or non-management levels of the NRSRO have responsibility for either of these functions? For example, should the personnel responsible for monitoring the operation of the internal control structure and the NRSRO's adherence to the internal control structure generate periodic (weekly, monthly, quarterly, and/or annual) reports that are provided to the NRSRO's most senior managers and the board about the internal control structure? If so, what information should be contained in those reports? In addition, Section 15E(t)(3)(C) of the Exchange Act provides that the board of directors of the NRSRO shall "oversee" the "effectiveness of the internal control system with respect to the policies and

[32] *See* 15 U.S.C. 78o–7(t)(3)(A).

[33] The term "internal control" has been defined in other contexts. For example, the Commission has defined internal control over financial reporting. *See* 17 CFR 240.13a–15(f).

[34] *See* 15 U.S.C. 78o–7(g) and (h).

procedures for determining credit ratings." [35] How should this statutorily mandated board responsibility be integrated with the responsibility of the NRSRO's management to maintain an effective internal control structure?

6. Is the requirement to provide an assessment by management of the effectiveness of the internal control structure sufficiently explicit? If not, how should the Commission modify proposed paragraph (a)(7) of Rule 17g–3 to make the requirement more understandable? For example, given that the NRSRO needs to maintain the internal control structure (*i.e.,* keep it in operation), should the Commission clarify that the assessment should address the effectiveness of the internal control structure during the entire fiscal year covered by the report?

7. In terms of reporting management's assessment of the effectiveness of the internal control structure, should the Commission provide guidance on how an NRSRO must assess the effectiveness of the internal control structure, such as evaluative criteria or standards? If so, what should those criteria or standards be? For example, should the Commission require that management's assessment of the effectiveness of the internal control structure be based on procedures sufficient to evaluate the design of the internal control structure and test its operating effectiveness?

8. In terms of management's assessment of the effectiveness of the internal control structure, should the Commission define the conditions that preclude management from concluding that the internal control structure is effective? If so, how should an ineffective internal control structure be defined? For example, should management be precluded from concluding that the internal control structure is effective if there are one or more instances of "material weaknesses" in the internal control structure? If one or more instances of "material weaknesses" should preclude management from concluding that its internal control structure is effective, then should the Commission define "material weakness"? If so, how should the term "material weakness" be defined? If management cannot conclude that the internal control structure is effective, what corrective action or sanctions should be imposed on the NRSRO?

9. In terms of reporting management's assessment of the effectiveness of the internal control structure, should the Commission provide guidance regarding the topics to be addressed in the report? If so, what should that guidance be? For example, if the Commission prescribes factors that an NRSRO should take into consideration in establishing, maintaining, enforcing, and documenting its internal control structure, should the report specifically reference those factors? In addition, should the report identify or describe the framework management used to conduct the evaluation of the effectiveness of the internal control structure? Moreover, should the report identify deficiencies found during the assessment process? If so, should all deficiencies be identified or only those which preclude management from concluding that the internal control structure is effective? Furthermore, should the Commission require that the report disclose whether there were any significant changes in the internal control structure or other factors that could significantly affect the internal control structure subsequent to the date of the evaluation, including any corrective actions in response to any material weaknesses found during the evaluation?

10. In terms of reporting management's assessment of the effectiveness of the internal control structure, should the report identify any fraud, significant errors, or previously undisclosed conflicts of interest identified during the assessment of the effectiveness of the internal control structure that could have a material effect on the integrity of the NRSRO's procedures and methodologies for determining credit ratings? What other disclosures should the report contain?

11. Should an NRSRO be required to maintain evidential matter, including documentation, to provide reasonable support for management's assessment of the effectiveness of the internal control structure that could be used by Commission examination staff to review the adequacy of the assessment? In this regard, should the Commission identify specific objectives of an internal control structure that the evidential matter would need to support? For example, should the evidential matter provide reasonable support for an assessment that the internal control structure is designed to effectively prevent or detect failures of the NRSRO to adhere to its policies, procedures, and methodologies for determining credit ratings? If such specific objectives should be identified, describe them and identify the evidential matter that could be retained to allow the Commission examination staff to review the adequacy of the NRSRO's assessment of the effectiveness of the internal control structure in achieving the objective.

12. With respect to proposed paragraph (b)(2) of Rule 17g–3, should the Commission provide more guidance on the type of management responsibilities that would qualify an individual as one who performs functions similar to a CEO? If so, what are those types of responsibilities?

13. Should the Commission require the internal control report to be filed separately from the Rule 17g–3 annual reports (which are kept confidential to the extent permitted by law) and, instead, require the internal control report to be disclosed to the public on, for example, the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system? What would be the benefits and costs of requiring the public disclosure of the report?

14. If it would be appropriate to make the report public, should the Commission prescribe a form for the report? If so, what information should the form require the NRSRO to provide in the disclosure? What would the form look like? Could any of the Commission's current forms serve as a model? If so, identify the forms and explain how they could be tailored to require an NRSRO to provide information about its internal control structure.

B. Conflicts of Interest Relating to Sales and Marketing

Section 932(a)(4) of the Dodd-Frank Act added new paragraph (3) to Section 15E(h) of the Exchange Act.[36] Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO.[37] Section 15E(h)(3)(B) of the Exchange Act provides that the Commission's rules must contain two additional provisions.[38] First, Section 15E(h)(3)(B)(i) requires that the Commission's rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate.[39] Second, Section 15E(h)(3)(B)(ii) requires that the Commission's rules shall provide for the suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing,

[35] *See* 15 U.S.C. 78o–7(t)(3)(A).

[36] Public Law 111–203 § 932(a)(4) and 15 U.S.C. 78o–7(h)(3).

[37] 15 U.S.C. 78o–7(h)(3)(A).

[38] 15 U.S.C. 78o–7(h)(3)(B)(i) and (ii).

[39] 15 U.S.C. 78o–7(h)(3)(B)(i).

that: (1) The NRSRO has committed a violation of a rule issued under Section 15E(h) of the Exchange Act; and (2) the violation affected a rating.[40]

The Commission proposes to implement Sections 15E(h)(3)(A), (B)(i), and (B)(ii) of the Exchange Act by amending the NRSRO conflict of interest rule—Rule 17g–5.[41] The proposals would amend the rule by: (1) identifying a new prohibited conflict in paragraph (c) of the rule; (2) adding a new paragraph (f) setting forth the finding the Commission would need to make in order to grant a small NRSRO an exemption from the prohibition; and (3) adding a new paragraph (g) setting forth the standard for suspending or revoking an NRSRO's registration for violating a rule adopted under Section 15E(h) of the Exchange Act.

1. Proposed New Prohibited Conflict

As noted above, Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of ratings by the NRSRO.[42] The Commission is proposing to implement this provision by identifying a new conflict of interest in paragraph (c) of Rule 17g–5.[43] Paragraph (c) prohibits a person within an NRSRO (as well as the NRSRO itself) [44] from having any of the conflicts of interest relating to the issuance or maintenance of a credit rating or credit rating agency identified in the paragraph under all circumstances (hereinafter the "absolute prohibitions").[45] Proposed new paragraph (c)(8) of Rule 17g–5 would identify a new absolute prohibition; namely, one in which the NRSRO issues or maintains a credit rating where a person within the NRSRO who participates in the sales or marketing of a product or service of the NRSRO or a product or service of a person associated with the NRSRO also participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative or quantitative models.[46]

The proposed new absolute prohibition would be designed to address situations in which, for example, individuals within the NRSRO responsible for selling its products and services could seek to influence a specific credit rating to favor an existing or prospective client or the development of a credit rating methodology to favor a class of existing or prospective clients. With regard to methodologies, the Commission notes that its staff found as part of the examination of the activities of the three largest NRSROs in rating residential mortgage-backed securities ("RMBS") and collateralized debt obligations ("CDOs") linked to subprime mortgages that it appeared "employees responsible for obtaining ratings business would notify other employees, including those responsible for criteria development, about business concerns they had related to the criteria." [47] The absolute prohibition in proposed paragraph (c)(8) of Rule 17g–5 would be designed to insulate individuals within the NRSRO responsible for the analytic function from such sales and marketing concerns and pressures.

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (c)(8) of Rule 17g–5. The Commission also seeks comment on the following:

1. Would the proposed amendment impact existing governance structures, reporting lines and internal organizations of NRSROs, particularly smaller NRSROs? If so, provide specific information about the nature and consequences of such impacts.

2. Are there sales and marketing activities persons that participate in determining credit ratings or developing or approving procedures or methodologies used for determining credit ratings, including qualitative or quantitative models, could participate in without undermining the goal of proposed paragraph (a)(8) of Rule 17g–5? If so, what types of activities? How could proposed new paragraph (a)(8) of Rule 17g–5 be modified to retain an absolute prohibition and at the same time not prohibit persons who participate in determining credit ratings or developing or approving procedures or methodologies used for determining credit ratings, including qualitative or quantitative models, to participate in sales and marketing activities that do not expose them to business concerns that could compromise their analytical integrity?

3. Should the Commission provide guidance on what constitutes a sales and marketing activity? If so, how should the Commission define "sales and marketing activities"? In addition, should the Commission define what it means to "participate in sales and marketing activities"? Similarly, should the Commission define what it means to "participate in developing or approving procedures and methodologies used for determining credit ratings"? If so, how should the Commission define these terms?

4. Identify other requirements applicable to NRSROs that are designed to address this conflict of interest.

2. Proposed Exemption for "Small" NRSROs

Section 15E(h)(3)(B)(i) of the Exchange Act requires that the Commission's rules under Section 15E(h)(3)(A) shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate.[48] To implement this provision, the Commission is proposing to amend Rule 17g–5 by adding a new paragraph (f).[49] Proposed paragraph (f) would provide a mechanism for a small NRSRO to apply in writing for an exemption from the absolute prohibition proposed in new paragraph (c)(8).[50] In particular,

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[40] 15 U.S.C. 78o–7(h)(3)(B)(ii).

[41] 17 CFR 240.17g–5. The Commission adopted and subsequently amended Rule 17g–5 pursuant, in part, to authority in Section 15E(h)(2) of the Exchange Act (15 U.S.C. 78o–7(h)(2)). *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33595–33599 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469 (Feb. 9, 2009); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63842–63850 (Dec. 4, 2009).

[42] 15 U.S.C. 78o–7(h)(3)(A).

[43] *See* proposed new paragraph (c)(8) of Rule 17g–5.

[44] *See* paragraph (d) of Rule 17g–5 defining "person within an NRSRO" for purposes of the rule. 17 CFR 240.17g–5(d).

[45] *See* 17 CFR 240.17g–5(c)(1)–(7). These absolute prohibitions are distinguished from the types of conflicts identified in paragraph (b) of Rule 17g–5, which are prohibited *unless* the NRSRO has taken the steps to address them set forth in paragraph (a) of Rule 17g–5. *See* 17 CFR 240.17g–5(a) and (b).

[46] *See* proposed new paragraph (c)(8) of Rule 17g–5.

[47] *See Summary Report of Issues Identified in the Commission Staff's Examination of Select Credit Rating Agencies,* Commission (July 2008), pp. 25–26.

[48] *See* 15 U.S.C. 78o–7(h)(3)(B)(i).

[49] *See* proposed new paragraph (f) of Rule 17g–5.

[50] Section 36 of the Exchange Act provides that the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors. 17 U.S.C. 78mm. Consequently, an NRSRO could request to be exempt from the proposed sales and marketing prohibition pursuant to this more general authority in Section 36. *See id.* Nonetheless, the Commission has adopted rules providing mechanisms for registrants—such as broker-dealers—to request an exemption from specific rule requirements. *See, e.g.,* 17 CFR 240.15c3–1(b)(3); 17 CFR 240.15c3–3(k)(3); and 17 CFR 240.17a–5(m)(3). The Commission preliminarily believes proposed paragraph (f) of Rule 17g–5 should parallel such provisions.

proposed new paragraph (f) of Rule 17g–5 would provide that upon written application by an NRSRO, the Commission may exempt, either conditionally or unconditionally or on specified terms and conditions, such NRSRO from the provisions of paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[51]

The Commission preliminarily believes that the absolute prohibition should apply to all NRSROs. However, the Commission notes that in some cases the small size of an NRSRO could make a complete separation of the sales and marketing function from the credit rating analytical function inappropriate. For example, the NRSRO may not have enough staff (or the resources to hire additional staff) to establish separate functions. In such a case, the Commission would entertain requests for relief. In granting such relief, the Commission may impose conditions designed to preserve as much of the separation between these two functions as possible.

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (f) of Rule 17g–5. The Commission also seeks comment on the following:

1. The Commission notes that Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO. Section 15E(h)(3)(B)(i) requires that the Commission's rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the *separation* of the production of ratings and sales and marketing activities is not appropriate (emphasis added). Why would the separation of the production of ratings from sales and marketing activities be appropriate for NRSROs that are not small but might not be appropriate for NRSROs that are small? For example, does the small size of an NRSRO make the conflict less likely to influence ratings? If so, why? Alternatively, could the small size of an NRSRO make the application of the absolute prohibition impractical, thus preventing a small credit rating agency from seeking registration or a small NRSRO from maintaining its registration? If so, would the adverse impact on competition outweigh the benefit of applying the absolute prohibition to a small NRSRO? If so, explain how.

2. Would the case-by-case approach proposed by the Commission appropriately implement Section 15E(h)(3)(B)(i) of the Exchange Act? If not, how should the proposal be modified? For example, should the Commission prescribe an objective self-executing exemption from the absolute prohibition in proposed paragraph (c)(8) of Rule 17g–5? For example, should the exemption be automatic for "small" NRSROs? If so, how should the Commission define a small NRSRO? For example, should the definition be based on the total assets of the NRSRO? In this regard, should the Commission adopt a rule that exempts any NRSRO that has total assets of $5 million or less from the absolute prohibition given that is how the Commission currently defines a small NRSRO for purposes of the Regulatory Flexibility Act? [52] How would such an exemption work in practice? For example, would such a rule need to provide for a transition period for an NRSRO that crosses the total asset threshold to provide time to establish the separate sales and marketing function? How long should such a transition period be? For example, should it be 90, 120, 180 or some other number of days after the required filing date of the NRSRO's audited financial statements indicating the threshold was crossed are required to be filed with the Commission?

3. What other factors should the Commission consider in analyzing whether the small size of an NRSRO makes it not appropriate to require the separation of the production of credit ratings from sales and marketing activities? Should the Commission consider the annual revenues of the NRSRO? Should the Commission consider the number of employees of the NRSRO? Would consideration of the number of employees create a disincentive to devote resources to adequately staff the NRSRO? Are there factors in addition to an NRSRO's size the Commission should consider in analyzing whether to grant an exemption under this proposal? If so, please describe any such factors.

4. If the Commission granted relief to an NRSRO, should the Commission specify conditions for obtaining the relief? If so, what should those conditions be? For example, should the conditions limit the number of credit analysts that can participate in sales and marketing activities, limit the manner in which they can participate in such activities, require additional procedures to address the conflict, and require additional procedures to document how credit analysts participate in sales and marketing activities? If any of these conditions would be appropriate, describe how they could be implemented in practice.

3. Suspending or Revoking a Registration

Section 15E(h)(3)(B)(ii) of the Exchange Act specifies that the Commission's rules under Section 15E(h) of the Exchange Act shall provide for suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that the NRSRO has committed a violation of "a rule issued under this subsection" and the violation of the rule affected a credit rating.[53] While Section 15E(h)(3)(A) relates only to the conflict arising from sales and marketing activities, Section 15E(h)(3)(B)(ii)—by using the term "subsection"—has a broader scope in that it refers to all rules issued under Section 15E(h) of the Exchange Act.[54] Consequently, the rule implementing Section 15E(h)(3)(B)(ii) must provide for the suspension or revocation of an NRSRO's registration for violations of any rule adopted under Section 15E(h).[55] Moreover, the Commission notes that Section 15E(h)(3)(B)(ii) does not require that the violation of the rule be "willful." [56]

Currently, the Commission can seek to suspend or revoke the registration of an NRSRO, in addition to other potential sanctions, under Section 15E(d) of the Exchange Act.[57] In particular, Section 15E(d) provides that the Commission shall, by order, censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of an NRSRO if the Commission finds, "on the record after notice and opportunity for a hearing," that such sanction is

[51] *See* proposed new paragraph (f) of Rule 17g–5.

[52] *See* Section VII.C of this release; *see also* 5 U.S.C. 603(a), *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33618 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6481 (Feb. 9, 2009); and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63863 (Dec. 4, 2009).

[53] 15 U.S.C. 78o–7(h)(3)(B)(ii).

[54] *See id.*

[55] *Id.*

[56] *Id.*

[57] *See* 15 U.S.C. 78o–7(d).

"necessary for the protection of investors and in the public interest" and the NRSRO, or a person associated with the NRSRO, has engaged in one or more of six categories of conduct.[58] The first category is that the NRSRO or an associated person has: committed or omitted any act, or has been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of Section 15(b)(4) of the Exchange Act; has been convicted of any offense identified in Section 15(b)(4)(B) of the Exchange Act; or has been enjoined from any action, conduct, or practice identified in Section 15(b)(4)(C) of the Exchange Act.[59] The acts enumerated in Section 15(b)(4)(D) of the Exchange Act include that the person has willfully violated any provision of the Exchange Act or the rules or regulations under the Exchange Act.[60] Therefore, the Commission has the ability, under Section 15E(d), to suspend or revoke the registration of an NRSRO for a willful violation of Rule 17g–5, but does not have the power to do so under Section 15E(d) for violations of Rule 17g–5 that are not willful.[61]

The Commission preliminarily believes a rule implementing Section 15E(h)(3)(B)(ii) of the Exchange Act should work in conjunction with Sections 15E(d) and 21C of the Exchange Act.[62] Specifically, proposed new paragraph (g) of Rule 17g–5 would provide that in a proceeding pursuant to Section 15E(d) or Section 21C of the Exchange Act, the Commission shall suspend or revoke the registration of an NRSRO if the Commission finds in such proceeding that the NRSRO has violated a rule issued under Section 15E(h) of the Exchange Act, the violation affected a rating, and that suspension or revocation is necessary for the protection of investors and in the public interest.[63] The Commission preliminarily believes this provision is appropriately placed in Rule 17g–5 given that it is the predominant rule issued under Section 15E(h) of the Exchange Act.[64]

The first two proposed findings in proposed paragraph (g) of Rule 17g–5 would mirror the text of Section 15E(h)(3)(B)(ii) of the Exchange Act.[65] The final finding—that the suspension or revocation is necessary for the protection of investors and in the public interest—is a common finding that the Commission must make to take disciplinary action against a registered person or entity.[66] It is not, however, a finding that the Commission must make in a proceeding under Section 21C.[67] Further, unlike Section 15E(d) of the Exchange Act, the Commission can take action under Section 21C for violations of the securities laws even if such violations are not willful.[68] Moreover, Section 15E(h)(3)(B)(ii) of the Exchange Act does not prescribe the maximum amount of time for which an NRSRO could be suspended, whereas Section 15E(d) provides that a suspension shall not exceed 12 months.[69] Consequently, a proceeding pursuant to paragraph (g) of Rule 17g–5 brought under Section 21C could result in a suspension that exceeds 12 months. Given that Section 21C of the Exchange Act has a lower threshold for the intent to establish a violation, and given the substantial consequences of suspending or revoking a registration, the Commission preliminarily believes that the public interest finding would be an appropriate predicate to a suspension or revocation of an NRSRO's registration under Section 21C of the Exchange Act.

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (g) of Rule 17g–5. The Commission also seeks comment on the following:

1. Should the Commission propose, pursuant to Section 15E(h)(3)(B)(ii) of the Exchange Act, an independent and alternative process for suspending or revoking an NRSRO's registration for a violation of a rule issued under Section 15E(h) (*i.e.,* a proceeding that is not pursuant to Sections 15E(d) and 21C of the Exchange Act)? If so, how should such a separate proceeding operate? For example, should it require the same findings proposed above or alternative or additional findings?

2. In terms of the finding that "the violation affected a rating," what type of factual predicate should support such a finding? For example, would it be appropriate to make such a finding if the Commission determined that the violation caused the NRSRO to issue a credit rating that was not based solely on its documented procedures and methodologies for determining credit ratings (*e.g.,* the Commission finds that undue influence impacted the credit rating assigned to the rated obligor, security, or money market instrument because strictly adhering to the procedures and methodologies would have resulted in the NRSRO issuing a credit rating at a lower or higher notch in the applicable rating scale)?

3. With respect to proposed new paragraph (g) of Rule 17g–5, should the proposed rule include additional or alternative findings that the Commission would need to make to revoke or suspend the registration of an NRSRO in a proceeding under Sections 15E(d) or 21C? If so, what should those findings be? For example, should the Commission need to find that the violation harmed investors or other users of credit ratings?

4. Should the Commission, as proposed, require a public interest finding in order to suspend or revoke an NRSRO's registration in a proceeding under paragraph (g) of Rule 17g–5 pursuant to Section 21C, or should the rule provide for the suspension or revocation of an NRSRO's registration solely based on a finding that a violation of a rule affected a rating?

5. With respect to proposed new paragraph (g) of Rule 17g–5, should the rule incorporate only Section 15E(d) of the Exchange Act? If so, why? Alternatively, should it incorporate only Section 21C of the Exchange Act? If so, why?

6. As noted above, there would be no limit on the amount of time for which the Commission could suspend the registration of an NRSRO in a proceeding under Section 21C of the Exchange Act and proposed paragraph (g) of Rule 17g–5. Should the Commission add such a time limit to be consistent with Section 15E(d) of the Exchange Act? Alternatively, does the

[58] 15 U.S.C. 78o–7(d).

[59] *See* 15 U.S.C. 78o–7(d)(1)(A); *see also* 15 U.S.C. 78o(b)(4)(A), (B), (C), (D), (E), (G), and (H).

[60] 15 U.S.C. 78o(b)(4)(D).

[61] *See* 15 U.S.C. 78o–7(d)(1)(A) and 15 U.S.C. 78o(b)(4)(D).

[62] 15 U.S.C. 78o–7(d) and 15 U.S.C. 78u–3.

[63] *See* proposed new paragraph (g) of Rule 17g–5; *see also* 15 U.S.C. 78o–7(d) and (h), and 78u–3. Section 21C of the Exchange Act provides the Commission with authority, among other things, to enter an order requiring, among other things, that a person cease-and-desist from continuing to violate, or future violations of, a provision of the Exchange Act or any rule or regulation thereunder. Proposed paragraph (g) of Rule 17g–5 would provide that the Commission can issue an order in a cease-and-desist proceeding suspending or revoking the registration of an NRSRO. *Id.*

[64] *See, e.g., Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33595–33599 (June 18, 2007), *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469 (Feb. 9, 2009), and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63842–63850 (Dec. 4, 2009).

[65] *Compare* the first two findings in proposed new paragraph (g) of Rule17g–5 (that the NRSRO has violated a rule issued under Section 15E(h) of the Act; and the violation affected a rating) with Sections 15E(h)(3)(B)(ii)(I) and (II) of the Exchange Act, respectively. 15 U.S.C. 78o–7(h)(3)(B)(ii)(I) and (II).

[66] For example, the Commission must make this finding to take action under Section 15E(d) of the Exchange Act. *See* 15 U.S.C. 78o–7(d).

[67] *See* 15 U.S.C. 78u–3.

[68] *Compare* 15 U.S.C. 78o–7(d) and 15 U.S.C. 78u–3.

[69] *Compare* 15 U.S.C. 78o–7(h)(3)(B)(ii) and 15 U.S.C. 78o–7(d).

different standard provide the Commission with appropriate flexibility to seek longer suspensions?

C. "Look-Back" Review

Section 932(a)(4) of the Dodd-Frank Act amended Section 15E(h) of the Exchange Act to add a new paragraph (4).[70] The Commission is proposing to implement rulemaking required in Section 15E(h)(4)(A)(ii) of the Exchange Act through proposed paragraph (c) of new Rule 17g–8.[71] In addition, the Commission is proposing to amend Rule 17g–2 to apply that rule's record retention and production requirements to the policies and procedures required pursuant to the self-executing provisions in Section 15E(h)(4)(A) of the Exchange Act and pursuant to proposed paragraph (c) of new Rule 17g–8.[72]

1. Proposed Paragraph (c) of New Rule 17g–8

Sections 15E(h)(4)(A)(i) and (ii) of the Exchange Act require an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the NRSRO or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the NRSRO, was employed by the NRSRO and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the NRSRO shall: (1) Conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating (a "look-back review"); and (2) take action to revise the rating if appropriate, *in accordance with such rules as the Commission shall prescribe.*[73] Consequently, Section 15E(h)(4)(A)(i) of the Exchange Act contains a self-executing provision requiring an NRSRO to establish, maintain, and enforce policies and procedures as described above to conduct look-back reviews, and Section 15E(h)(4)(ii) contains a provision mandating Commission rulemaking with respect to requirements for an NRSRO to revise a credit rating in certain circumstances.[74]

The Commission proposes to implement the rulemaking required in Section 15E(h)(4)(A)(ii) of the Exchange Act by proposing paragraph (c) of new Rule 17g–8.[75] Proposed paragraph (c) would require that the policies and procedures the NRSRO establishes, maintains, and enforces pursuant to Section 15E(h)(4)(A) of the Exchange Act must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure the NRSRO will: (1) Immediately place the credit rating on credit watch; (2) promptly determine whether the credit rating must be revised so it no longer is influenced by a conflict of interest and is solely the product of the NRSRO's documented procedures and methodologies for determining credit ratings; and (3) promptly publish a revised credit rating, if appropriate, or affirm the credit rating if appropriate.[76]

The Commission acknowledges that Section 15E(c)(2) of the Exchange Act provides, in pertinent part, that the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which an NRSRO determines credit ratings.[77] The Commission preliminarily believes that the steps described above would not regulate the procedures and methodologies by which an NRSRO determines credit ratings because the NRSRO would apply its own procedures and methodologies to determine whether the credit rating should be revised. Moreover, the placement of a credit rating on credit watch is not a determination of a credit rating (*i.e.,* it does not change the credit rating) but rather is a means of providing notice to users of the NRSRO's credit ratings that an active evaluation of the credit rating is underway. For these reasons, the Commission preliminarily believes that the approach in proposed paragraph (c) of new Rule 17g–8 appropriately avoids regulating the substance of credit ratings or the procedures and methodologies an NRSRO uses to determine credit ratings but, at the same time, requires an NRSRO to have procedures reasonably designed to ensure that it immediately provides notification and promptly address a credit rating that is influenced by a conflict of interest.[78] The Commission also preliminarily believes that the actions prescribed in proposed paragraph (c) of new Rule 17g–8 are steps a prudent NRSRO would take in the normal course when discovering a conflict of interest influenced the determination of a credit rating. Nonetheless, the Commission is soliciting comment on these issues below.

Proposed paragraph (c)(1) of new Rule 17g–8 would require the NRSRO to have procedures reasonably designed to ensure that, upon the NRSRO's discovery of the conflict, it immediately publishes a rating action placing the applicable credit ratings of the obligor, security, or money market instrument on credit watch or review.[79] When an NRSRO publishes a rating action indicating the current credit rating assigned to an obligor, security, or money market instrument (or a class of obligors, securities, or money market instruments) is on credit watch or under review, the purpose is to notify users of the NRSRO's credit ratings that the credit rating is undergoing a process of evaluation that may result in it being upgraded or downgraded.[80] The Commission preliminarily believes an NRSRO should have policies and procedures reasonably designed to ensure that the users of its credit ratings are provided immediate notice of the discovery that a conflict influenced a credit rating assigned to an obligor, security, or money market instrument.

[70] *See* Public Law 111–203 § 932(a)(4) and 15 U.S.C. 78o–7(h)(4).

[71] New Rule 17g–8 would be codified at 17 CFR 240.17g–8, if adopted. In addition, new Rule 17g–8, as proposed, would consolidate requirements that NRSROs have policies and procedures in a number of areas. As discussed below in Section II.F.1 of this release, proposed paragraph (a) of new Rule 17g–8 would require an NRSRO to establish policies and procedures with respect to credit rating methodologies. In addition, as discussed below in Section II.J.1 of this release, proposed paragraph (b) of new Rule 17g–8 would require an NRSRO to establish policies and procedures with respect to the use of credit rating symbols, numbers, and scores. And, as discussed in this section of the release, the Commission is proposing to implement rulemaking specified in Section 15E(h)(4)(A)(ii) of the Exchange Act (15 U.S.C. 78o–7(h)(4)(A)(ii)), in part, by proposing paragraph (c) of new Rule 17g–8.

[72] *See* 15 U.S.C. 78o–7(h)(4)(A), proposed paragraph (c) of new Rule 17g–8, and proposed new paragraph (a)(9) of Rule 17g–2.

[73] *See* 15 U.S.C. 78o–7(h)(4)(A)(i) and (ii) (emphasis added).

[74] *Id.*

[75] *See* proposed paragraph (c) of new Rule 17g–8 and 15 U.S.C. 78o–7(h)(4)(A)(ii).

[76] *See* proposed paragraphs (c)(1), (2) and (3) of new Rule 17g–8.

[77] 15 U.S.C. 78o–7(c)(2).

[78] The Commission also notes an NRSRO would, among other things, violate Section 15E(h)(1) of the Exchange Act and Rule 17g–5, among other rules, if it continued to assign an obligor, security, or money, market instrument a credit rating that, absent the undue influence of the conflict of interest, would be different because the NRSRO could not be deemed to have policies and procedures reasonably designed to address and manage conflicts of interest that can arise from its business under such a circumstance. *See* 15 U.S.C. 78o–7(h) and 17 CFR 17g–5.

[79] *See* proposed paragraph (c)(1) of new Rule 17g–8.

[80] For example, an NRSRO may place a credit rating on negative credit watch, which means it is evaluating whether to downgrade the credit rating, or on positive credit watch, which means it is evaluating whether to upgrade the credit rating.

The Commission also preliminarily believes an effective means of providing such notice would be to place the obligor, security, or money market instrument on credit watch.

Proposed paragraph (c)(1) of new Rule 17g–8 also would provide that the policies and procedures must be reasonably designed to ensure the NRSRO includes the information required by paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7 with the publication of the rating action placing the credit rating of the obligor, security, or money market instrument on credit watch.[81] As discussed below in Section II.G of this release, the Commission is proposing to implement Section 15E(s) of the Exchange Act, in part, by requiring, in proposed new paragraph (a) of Rule 17g–7, that an NRSRO generate a form to be included with the publication of a credit rating.[82] Proposed paragraph (a) of Rule 17g–7, among other things, would prescribe certain qualitative and quantitative information that must be disclosed in the form.[83] The Commission is proposing that the qualitative information in the form include certain disclosures that would need to be made if the rating action results from a look-back review conducted pursuant to Section 15E(h)(4)(A)(i) of the Exchange Act and proposed paragraph (c) of new Rule 17g–8.[84] Specifically, when a credit rating is placed on credit watch, proposed new paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7 would require the NRSRO to provide in the form published with the rating action an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest and the date and associated credit rating of each prior rating action the NRSRO currently has determined was influenced by the conflict.[85] This would alert users of the NRSRO's credit ratings that the credit rating assigned to the obligor, security, or money market instrument might be revised to address a conflict of interest and would identify the prior rating action or actions the NRSRO has determined were influenced by the conflict. With respect to identifying the prior rating actions, the Commission is proposing that the rule require the NRSRO to provide the date and associated credit rating of such actions the NRSRO "currently has determined" were influenced by the conflict.[86] The Commission's proposed use of the term "currently" is designed to conform to the requirement of proposed paragraph (c)(1) of Rule 17g–8 that the NRSRO have procedures designed to place the credit rating of the obligor, security, or money market instrument on credit watch *immediately* upon the discovery that a conflict influenced a prior credit rating action (*i.e.,* not wait until the NRSRO has determined whether additional credit ratings previously assigned to the obligor, security, or money market instrument also were influenced by the conflict). The Commission preliminarily believes that the best approach would be to alert users of the NRSRO's credit ratings as soon as possible after a conflict is discovered.

Proposed paragraph (c)(2) of new Rule 17g–8 would require the NRSRO to have procedures reasonably designed to ensure it promptly determines whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings.[87] The goal would be to ensure as quickly as possible that the credit rating assigned to the obligor, security, or money market instrument is solely a product of the NRSRO's procedures and methodologies for determining credit ratings (*i.e.,* is in no way influenced by the conflict). With respect to making this determination, the Commission preliminarily believes one approach would be to apply *de novo* the NRSRO's procedures and methodologies for determining credit ratings to the rated obligor, security, or money market instrument and revise the current credit rating if the *de novo* application produces a credit rating at a different notch on the rating scale.

The Commission does not expect an NRSRO would revise a credit rating in every circumstance in which an earlier rating action was influenced by a conflict of interest. The Commission preliminarily notes that Section 15E(h)(4)(A)(ii) of the Exchange Act provides that the NRSRO's policies and procedures shall be reasonably designed to, among other things, ensure that the NRSRO takes action to revise the credit rating "if appropriate."[88] It is possible, for example, that in the period since the NRSRO published the conflicted credit rating events unrelated to the conflict occurred that when factored into a *de novo* application of the NRSRO's procedures and methodologies for determining credit ratings would produce a credit rating at the same notch in the rating scale as the credit rating that was influenced by the conflict.[89] The Commission preliminarily believes a requirement that the NRSRO nonetheless revise the credit rating could interfere with the NRSRO's procedures and methodologies for determining credit ratings in that it would force the NRSRO to change the credit rating assigned to the obligor, security, or money market instrument to a different notch in the rating scale than would be the case if the credit rating were solely a product of the NRSRO's procedures and methodologies. Consequently, a mandatory revision requirement could, in effect, require the NRSRO to publish a credit rating that was inaccurate from the perspective of those procedures and methodologies.

Proposed paragraph (c)(3) of new Rule 17g–8 would require that the NRSRO have procedures reasonably designed to ensure it promptly publishes a revised credit rating, if appropriate, or an affirmation of the credit rating, if appropriate, based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised.[90] The Commission's intent is for the NRSRO to have procedures that are reasonably designed to notify users of the NRSRO's credit ratings as quickly as possible, whether the credit rating assigned to the obligor, security, or money market instrument will be

[81] *Id.; see also* proposed new paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7.

[82] *See* 15 U.S.C. 78o–7(s) and proposed new paragraph (a) of Rule 17g–7.

[83] *See* proposed new paragraphs (a)(1)(ii)(A)–(N) of Rule 17g–7.

[84] *See* proposed new paragraphs (a)(1)(ii)(J)(*3*)(*i*)–(*iii*) of Rule 17g–7 and related discussion below in Section II.G.3 of the release.

[85] *See* proposed new paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7.

[86] *Id.*

[87] *See* proposed paragraph (c)(2) of new Rule 17g–8.

[88] 15 U.S.C. 78o–7(h)(4)(A)(ii).

[89] For example, assume that nine months ago an analyst upgraded the credit rating assigned to an issuer's securities from BBB to AA. The analyst leaves the NRSRO to work for the issuer. The analyst's new employment triggers a look-back review of the rating action upgrading the credit rating from BBB to AA pursuant to Section 15E(h)(4)(A)(i) of the Exchange Act. The look-back review determines the credit rating should not have been upgraded from BBB to AA at that point in time and the analyst's action in upgrading the credit rating was influenced by the prospect of employment with the issuer. The NRSRO performs a *de novo* review of the credit rating assigned to the issuer by applying its procedures and methodologies for determining credit ratings. This review—as required by the procedures and methodologies—takes into consideration favorable financial results the issuer reported three months ago. Consequently, the process of re-rating the issuer's securities determines the current credit rating should be AA.

[90] *See* proposed paragraphs (c)(3)(i) and (ii) of new Rule 17g–8; *see also* proposed new paragraphs (a)(1)(ii)(J)(3)(ii) and (iii) of Rule 17g–7.

changed or remain the same.[91] The goal would be to promptly remove the uncertainty surrounding the credit rating to limit the potential that investors and other users of credit ratings might make investment or other credit based decisions based on incomplete information.

As with the placement of the credit rating on credit watch, proposed paragraph (c)(3) of new Rule 17g–8 would require that the NRSRO's procedures would need to be reasonably designed to ensure that information required pursuant to proposed new paragraph (a)(1)(ii)(J)(*3*)(ii) and (iii) of Rule 17g–7, respectively, is included with the publication of a revised or affirmed credit rating.[92] In the case of a revised rating, proposed new paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7 would require the NRSRO to provide in the form published with the rating action an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, the date and associated credit rating of each prior rating action the NRSRO has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action.[93] Similarly, in the case of an affirmed rating, proposed new paragraph (a)(1)(ii)(J)(*3*)(*iii*) of Rule 17g–7 would require the NRSRO to provide an explanation of why no rating action was taken to revise the credit rating notwithstanding the conflict, the date and associated credit rating of each prior rating action the NRSRO has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action.[94]

As indicated in the proposed disclosures, the NRSRO would need to include an estimate of the impact the conflict had on each prior rating action influenced by the conflict.[95] The Commission preliminarily believes one approach an NRSRO could take to making such an estimate would be to apply *de novo* its procedures and methodologies for determining credit ratings to the rated obligor, security, or money market instrument using information and inputs as of the time period for which it was determined that the credit rating was influenced. In other words, under this approach the NRSRO would reconstruct the past rating action through a "conflict-free" application of its procedures and methodologies for determining credit ratings. The NRSRO then could compare the credit ratings and disclose the difference between the rating action that was influenced by a conflict and the reconstructed rating action.

The disclosures required by proposed new paragraphs (a)(1)(ii)(J)(*3*)(*i*), (*ii*) and (*iii*) of Rule 17g–7 would alert users of the NRSRO's credit ratings that the rating action was taken because a conflict of interest had influenced one or more credit ratings assigned to the obligor, security, or money market instrument.[96] In addition, the estimate of the impact of the conflict would provide users of the NRSRO's credit ratings with a sense of the magnitude of the variation between the credit rating influenced by the conflict and the credit rating that would have been determined had the conflict not existed. The users of the NRSRO's credit ratings could consider this information in evaluating the ability of the NRSRO to manage conflicts of interest in the production of credit ratings. Moreover, if the variation between the credit rating influenced by the conflict and the "un-conflicted" credit rating was large (*e.g.,* 2 or 3 notches in the applicable rating scale), users of the NRSRO's credit ratings could consider the potential risk of using the NRSRO's credit ratings to make investment or other credit-based decisions (particularly if the revision downgraded the credit rating to a low category in the rating scale).

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (c) of new Rule 17g–8. The Commission also seeks comment on the following:

1. Would the requirements to have procedures reasonably designed to ensure the NRSRO takes the steps set forth in proposed paragraphs (c)(1), (2), and (3) of new Rule 17g–8 alter the procedures and methodologies an NRSRO uses to determine credit ratings? For example, would an NRSRO take materially different steps if a look-back review conducted pursuant to Section 15E(h)(4)(A) of the Exchange Act determined that a credit rating was influenced by a conflict of interest? If so, describe in detail how those steps would differ.

2. Under Section 15E(h)(4)(A)(i) of the Exchange Act, an NRSRO must, in certain circumstances, conduct a review to determine whether any conflicts of interest of an employee influenced the credit rating. Should the Commission define what it means to have a conflict of interest "influence" a credit rating? If so, how should this term be defined? For example, should a credit rating be deemed "influenced" if the NRSRO would have taken a different rating action with respect to the credit rating in the absence of the conflict?

3. How would an NRSRO determine whether this conflict influenced a credit rating? Describe the types of evidence that would support such a determination. What steps could an NRSRO take to analyze whether this conflict influenced a credit rating? Are there any practical issues with respect to making such a determination? If so, describe them.

4. Is there any reason an NRSRO should not have procedures reasonably designed to ensure it immediately publishes a rating action placing the obligor, security, or money market instrument on credit watch based on the discovery of the conflict and include with the publication of the rating action the information required by proposed new paragraph (a)(1)(ii)(J)(3)(*i*) of Rule 17g–7 as would be required by proposed paragraph (c)(1) of Rule 17g–8? If so, please explain in detail the rationale for not disclosing this information immediately in this manner. In addition, if a commenter agrees with the objective of the requirement but not the manner of disclosure, describe any alternative means of disclosure that would achieve the objective.

5. What practical issues should the Commission consider in implementing proposed paragraph (c)(1) of new Rule 17g–8? How could the proposal be modified to address any practical issues identified without undermining the objectives of the proposal?

6. Would the information required by proposed new paragraph (a)(1)(ii)(J)(*3*)(*i*) of Rule 17g–7 to be included in the form published with a rating action placing the obligor, security, or money market instrument on credit watch be useful to the users of the NRSRO's credit ratings? Is there additional or alternative information that should be provided? If so, please describe such additional or alternative information.

[91] The Commission notes that, in the case of an NRSRO that makes its rating actions available only to subscribers, former subscribers who made an investment or other credit based decision using the credit rating likely would not receive notice that the credit rating was influenced by a conflict of interest as well as any changes made to the credit rating as a result of the "look-back" review.

[92] *See* proposed paragraphs (c)(3)(i) and (ii) of new Rule 17g–8.

[93] *See* proposed new paragraph (a)(1)(ii)(J)(*3*)(*ii*) of Rule 17g–7.

[94] *See* proposed new paragraph (a)(1)(ii)(J)(*3*)(*iii*) of Rule 17g–7.

[95] *See* proposed paragraph (c)(2)(i) of new Rule 17g–8; *see also* proposed paragraph (c)(2)(ii) of Rule 17g–8.

[96] *See* proposed paragraphs (a)(1)(ii)(J)(*3*)(*i*), (*ii*) and (*iii*) of Rule 17g–7.

7. Is there any reason an NRSRO would not have procedures reasonably designed to ensure it promptly determines whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings as would be required pursuant to proposed paragraph (c)(2) of new Rule 17g–8? If so, please explain in detail the rationale for not promptly making such a determination. In addition, are there alternative approaches to addressing conflicts of interest influencing credit ratings that the Commission should consider? If so, please identify and describe them.

8. What practical issues should the Commission consider in implementing proposed paragraph (c)(2) of new Rule 17g–8? How could the proposal be modified to address any practical issues identified without undermining the objectives of the proposal?

9. Should the Commission be more prescriptive in terms of how an NRSRO would be required to determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the NRSRO uses to determine credit ratings? If so, what actions should the Commission require be included in the NRSRO's policies and procedures? For example, should the Commission specifically require the NRSRO to apply *de novo* its policies and procedures for determining credit ratings in the ways described above?

10. Would a *de novo* application of the NRSRO's policies and procedures for determining credit ratings be sufficient to address the conflict of interest? Are there alternative or additional approaches to determining whether a credit rating influenced by a conflict of interest should be revised?

11. Is there any reason an NRSRO should not have procedures reasonably designed to ensure that it promptly publishes, as applicable, a revised credit rating or an affirmation of the current credit rating based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised and include with the rating action the information required by proposed new paragraphs (a)(1)(ii)(J)(*3*)(*ii*) or (*iii*) of Rule 17g–7, as applicable, as would be required pursuant to paragraph (c)(3) of new Rule 17g–8? If so, please explain in detail the rationale for not promptly revising or affirming the current credit rating.

12. What practical issues should the Commission consider in implementing proposed paragraph (c)(3) of new Rule 17g–8 that would require an NRSRO to have procedures reasonably designed to ensure that it promptly publishes, as appropriate, a revised credit rating or an affirmation of the current credit rating and includes with the rating action the information required by proposed new paragraphs (a)(1)(ii)(J)(*3*)(*ii*) and (*iii*) of Rule 17g–7? For example, would the requirement to estimate the impact the conflict had on the prior rating actions substantially prolong the time between placing the credit rating on credit watch and either publishing a revised credit rating or affirming the current credit rating? How could the proposal be modified to address any practical issues identified without undermining the objective of promptly addressing a credit rating influenced by a conflict of interest and at the same time providing investors and other users of credit ratings with the information about the conflict?

13. In terms of estimating the impact of a conflict on a past rating action, would a feasible approach be to apply *de novo* the procedures and methodologies for determining credit ratings to the relevant obligor, security, or money market instrument using information and inputs as of the time period in which the conflicted credit rating was determined? Would this approach result in a meaningful estimate? Are there alternative or additional steps that could be taken to estimate the impact?

14. Would the information required by proposed new paragraphs (a)(1)(ii)(J)(*3*)(*ii*) and (*iii*) of Rule 17g–7 to be included in the form published with a revised or affirmed credit rating, respectively, be useful to the users of the NRSRO's credit ratings? Is there additional or alternative information that should be provided? If so, please describe such additional or alternative information.

15. How would the proposals impact obligors and issuers subject to a credit rating determined through the "look-back" review to be influenced by the conflict of interest?

16. In the case of an NRSRO that only makes its rating actions available to subscribers, former subscribers likely would not receive the proposed notices. Does this raise a significant issue that the Commission should address? If so, describe alternatives that could be used to address this issue.

2. Proposed Amendment to Rule 17g–2

Section 15E(h)(4)(A) of the Exchange Act requires an NRSRO "to establish, maintain, and enforce policies and procedures" but does not explicitly require an NRSRO to "document" such policies and procedures.[97] Nonetheless, the Commission preliminarily believes that documenting these policies and procedures is necessary in order to carry out the statute's mandate. The Commission also preliminarily believes they should be documented because, among other reasons, it is a sound practice for any organization to document its policies and procedures to promote better understanding of them among the individuals within the organization and thereby to promote compliance with such policies and procedures. In addition, for the reasons discussed in Section II.A.2 of this release, the Commission preliminarily believes that the policies and procedures should be subject to the same recordkeeping requirements that apply to other records an NRSRO is required to retain pursuant to Rule 17g–2.[98] For these reasons, the Commission proposes adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8 as a record an NRSRO must make and retain.[99] As a result, the policies and procedures would need to be documented in writing and be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[100]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (a)(9) of Rule 17g–2.

D. Fines and Other Penalties

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new subsection (p), which contains four paragraphs: (1), (2), (3), and (4).[101] Section 15E(p)(4)(A) provides that the Commission shall establish, by rule, fines and other penalties applicable to any NRSRO that

[97] *See* 15 U.S.C. 78o–7(h)(4)(A).

[98] 17 CFR 240.17g–2.

[99] *See* proposed new paragraph (a)(9) to Rule 17g–2; *see also* Section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[100] *See* 17 CFR 240.17g–2(c)–(f).

[101] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(p)(1)–(4).

violates the requirements of Section 15E of the Exchange Act and the rules under the Exchange Act.[102]

The Exchange Act already provides a wide range of fines, penalties, and other sanctions applicable to NRSROs for violations of any section of the Exchange Act (including Section 15E) and the rules under the Exchange Act (including the rules under Section 15E).[103] For example, Section 15E(d)(1) of the Exchange Act provides that the Commission shall censure an NRSRO, place limitations on the activities, functions, or operations of an NRSRO, suspend an NRSRO for a period not exceeding 12 months, or revoke the registration of an NRSRO if, among other reasons, the NRSRO violates Section 15E of the Exchange Act or the Commission's rules thereunder.[104] In addition, Section 932(a)(3) of the Dodd-Frank Act amended Section 15E(d) to explicitly provide additional potential sanctions.[105] First, it provided the Commission with the authority to seek sanctions against persons associated with, or seeking to become associated with, an NRSRO.[106] Under these amendments, the Commission can censure such persons, place limitations on the activities or functions of such persons, suspend such persons for a period not exceeding 1 year, or bar such persons from being associated with an NRSRO.[107] Second, Section 932(a)(3) of Dodd-Frank Act amended Section 15E(d) to provide the Commission with explicit authority to temporarily suspend or permanently revoke the registration of an NRSRO in a particular class or subclass of credit ratings if the NRSRO does not have adequate financial and managerial resources to consistently produce credit ratings with integrity.[108]

Furthermore, Sections 21, 21A, 21B, 21C, and 32 of the Exchange Act provide additional means to sanction an NRSRO for violations of the provisions of the Exchange Act such as the self-executing provisions in Section 15E of the Exchange Act and the rules under the Exchange Act.[109]

The Commission preliminarily believes these provisions of the Exchange Act, as amended by the Dodd-Frank Act, provide a sufficiently broad range of means to impose fines, penalties, and other sanctions on an NRSRO for violations of Section 15E of the Exchange Act and the rules thereunder. For example, the fines, penalties, and sanctions applicable to NRSROs are similar in scope to the fines, penalties, and sanctions applicable to other registrants under the Exchange Act, such as broker-dealers. Moreover, since enactment of the Rating Agency Act of 2006, the Commission has not identified a specific need for a fine or penalty applicable to NRSROs not otherwise provided for in the Exchange Act. Consequently, the Commission preliminarily believes it would be appropriate at this time to defer establishing new fines or penalties in addition to those provided for in the Exchange Act. However, in the future, the Commission may use the authority in Section 15E(p)(4)(A) of the Exchange Act if a specific need is identified. For the foregoing reasons, to implement Section 15E(p)(4)(A) of the Exchange Act at this time, the Commission proposes to amend the instructions to Form NRSRO by adding new Instruction A.10.[110] This new instruction would provide notice to credit rating agencies applying for registration and NRSROs that an NRSRO is subject to applicable fines, penalties, and other available sanctions set forth in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act (15 U.S.C. 78o–7, 78u, 78u–1, 78u–2, 78u–3, and 78ff, respectively) for violations of the securities laws.

Request for Comment

The Commission generally requests comment on all aspects of proposed new Instruction A.10 to Form NRSRO. The Commission also seeks comment on the following:

1. Are the fines, penalties and other sanctions applicable to NRSROs in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act sufficient? If not, what additional fines and penalties should the Commission establish by rule?

E. Public Disclosure of Information About the Performance of Credit Ratings

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new subsection (q), which contains paragraphs (1) and (2).[111] Section 15E(q)(1) provides that the Commission shall, by rule, require each NRSRO to publicly disclose information on the initial credit ratings determined by the NRSRO for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different NRSROs.[112] Section 15E(q)(2) provides that the Commission's rules shall require, at a minimum, disclosures that:

- Are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs;[113]
- Are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;[114]
- Include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the NRSRO;[115]
- Are published and made freely available by the NRSRO, on an easily accessible portion of its Web site, and in writing, when requested;[116]
- Are appropriate to the business model of an NRSRO;[117] and
- Require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.[118]

[102] *See* 15 U.S.C. 78o–7(p)(4)(A).

[103] *See* 15 U.S.C. 78o–7(d), 15 U.S.C. 78u, 15 U.S.C. 78u–1, 15 U.S.C. 78u–2, 15 U.S.C. 78u–3 and 15 U.S.C. 78ff.

[104] *See* Section 15E(d)(1)(A)–(F) of the Exchange Act (15 U.S.C. 78o–7(d)(1)(A)–(F)), as amended by the Dodd-Frank Act.

[105] *See* Public Law 111–203 § 932(a)(3) and 15 U.S.C. 78o–7(d).

[106] 15 U.S.C. 78o–7(d)(1).

[107] *Id.*

[108] *See* Public Law 111–203 § 932(a)(3) and 15 U.S.C. 78o–7(d)(2). Prior to this amendment, the Commission already had authority to suspend or revoke the registration of an NRSRO if it failed to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity. *See* Section 15E(d)(5) of the Exchange Act (15 U.S.C. 78o–7(d)(5)) before being amended by the Dodd-Frank Act, which re-designated paragraph (d)(5) of Section 15E as paragraph (d)(1)(E) (15 U.S.C. 78o–7(d)(1)(E)). Section 15E(d)(2) of the Exchange Act, however, provides explicit authority to target a suspension or registration revocation to a specific class or subclass of security. *See* 15 U.S.C. 78o–7(d)(2).

[109] *See* 15 U.S.C. 78o–7, 15 U.S.C. 78u, 15 U.S.C. 78u–1, 15 U.S.C. 78u–2, 15 U.S.C. 78u–3 and 15 U.S.C. 78ff, respectively. In fact, the Dodd-Frank Act amended Section 21B of the Exchange Act (15 U.S.C. 78u–2) to provide the Commission with the authority to assess money penalties in cease and desist proceedings under Section 21C (15 U.S.C. 78u–3). *See* Section 929P(a)(2) of the Dodd-Frank Act.

[110] *See* proposed new Instruction A.10 to Form NRSRO.

[111] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(q)(1) and (2).

[112] *See* 15 U.S.C. 78o–7(q)(1).

[113] *See* 15 U.S.C. 78o–7(q)(2)(A).

[114] *See* 15 U.S.C. 78o–7(q)(2)(B).

[115] *See* 15 U.S.C. 78o–7(q)(2)(C).

[116] *See* 15 U.S.C. 78o–7(q)(2)(D).

[117] *See* 15 U.S.C. 78o–7(q)(2)(E).

[118] *See* 15 U.S.C. 78o–7(q)(2)(F). As discussed below in Section II.G.4 of this release, the

Continued

Currently, the Commission's rules require NRSROs to publish two types of information about the performance of their credit ratings: (1) Performance statistics[119] and (2) ratings histories.[120] As discussed in detail below, the Commission proposes to implement the rulemaking mandated in Section 15E(q) of the Exchange Act, in substantial part, by significantly enhancing the requirements for generating and disclosing this information by amending the instructions to Form NRSRO as they relate to Exhibit 1 and amending Rule 17g–1, Rule 17g–2, and Rule 17g–7.[121]

1. Proposed Enhancements to Disclosures of Performance Statistics

The Commission proposes to implement the rulemaking mandated in Section 15E(q) of the Exchange Act, in part, by amending Instruction H to Form NRSRO (the "instructions for Exhibit 1") and Rule 17g–1.[122]

a. Proposed Amendments to Instructions for Exhibit 1

Exhibit 1 is part of the registration application a credit rating agency seeking to be registered as an NRSRO (an "applicant") must submit to the Commission and an NRSRO must file with the Commission, keep up-to-date, and publicly disclose.[123] Section 15E(a)(1)(B)(i) of the Exchange Act requires that the registration application include performance measurement statistics over short-term, mid-term, and long-term periods (as applicable).[124] The Commission implemented this requirement, in large part, through Exhibit 1 to Form NRSRO and the instructions for Exhibit 1.[125] Section 15E(b)(1)(A) of the Exchange Act provides that the performance measurement statistics must be updated annually in an annual submission of the registration application required by Section 15E(b)(2) (the "annual certification").[126]

The instructions for Exhibit 1 require an applicant and NRSRO to provide performance measurement statistics of the credit ratings of the applicant or NRSRO, including performance measurement statistics of the credit ratings separately for each class of credit rating for which the applicant is seeking registration or the NRSRO is registered.[127] The classes of credit ratings for which an NRSRO can be registered are enumerated in the definition of "nationally recognized statistical rating organization" in Section 3(a)(62) of the Exchange Act: (1) Financial institutions, brokers, or dealers; [128] (2) insurance companies; [129] (3) corporate issuers; [130] (4) issuers of asset-backed securities (as that term is defined in Section 1101(c) of part 229 of Title 17, Code of Federal Regulations, "as in effect on the date of enactment of this paragraph"); [131] and (5) issuers of government securities, municipal securities, or securities issued by a foreign government.[132] With respect to the fifth class of credit ratings, the instructions for Exhibit 1 require the NRSRO to provide performance measurement statistics for the following three subclasses (as opposed to the class

Commission preliminarily believes that the attestation requirement specified in Section 15E(q)(2)(F) should be incorporated into the rule the Commission is proposing to implement Section 15E(s) of the Exchange Act, which specifies, among other things, that the Commission adopt rules requiring an NRSRO to generate a form to be included with the publication of a credit rating. *See* 15 U.S.C. 78o–7(s) and proposed new paragraph (a)(1)(iii) of Rule 17g–7.

[119] *See* Exhibit 1 to Form NRSRO and Instruction H to Form NRSRO (as it relates to Exhibit 1). This type of disclosure shows the performance of an NRSRO's credit ratings in the aggregate through statistics. Specifically, it provides the percent of rated obligors, securities, and money market instruments in each category of credit rating in a rating scale (*e.g.,* AAA, AA, A, BBB, BB, B, CCC, CC, and C) that over a given time period were downgraded or upgraded to another credit rating category ("transition rates") and went into default ("default rates"). The goal is to provide a mechanism for users of credit ratings to compare the statistical performance of credit ratings across NRSROs.

[120] *See* 17 CFR 240.17g–2(d). This type of disclosure shows the credit rating history of a given rated obligor, security, or money market instrument. Specifically, it shows the initial credit rating and all subsequent modifications to the credit rating (such as upgrades, downgrades, and placements on watch) and the dates of such actions. The goal is to allow users of credit ratings to compare how different NRSROs rated an individual obligor, security, or money market instrument and how and when those ratings were changed over time. The disclosure of ratings histories also is designed to provide "raw data" that can be used by third parties to generate independent performance statistics such as transition and default rates.

[121] *See* proposed amendments to Instruction H to Form NRSRO (as it relates to Exhibit 1), paragraph (i) of Rule 17g–1, paragraph (d) of Rule 17g–2, and proposed new paragraph (b) of Rule 17g–7.

[122] *See* proposed amendments to the instructions for Exhibit 1 and paragraph (i) of Rule 17g–1.

[123] In particular, Section 15E(a)(1)(A) of the Exchange Act requires an applicant to furnish an application for registration to the Commission, in such form as the Commission shall require, by rule or regulation. *See* 15 U.S.C. 78o–7(a)(1)(A). Section 15E(a)(1)(B) of the Exchange Act identifies information that must be included in the application for registration. *See* 15 U.S.C. 78o–7(a)(1)(B)(i)–(x). The Commission implemented Sections 15E(a)(1)(A) and (B) of the Exchange Act by adopting Form NRSRO. *See* Form NRSRO; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33569–33582 (June 18, 2007). Section 15E(a)(3) of the Exchange Act provides that the Commission, by rule, shall require an NRSRO, upon being granted registration, to make the information and documents in its completed application for registration, or in any amendment to its application, publicly available on its Web site, or through another comparable, readily accessible means, except for certain information that is submitted on a confidential basis. *See* 15 U.S.C. 78o–7(a)(3). The Commission implemented this provision by adopting paragraph (i) of Rule 17g–1. *See* 17 CFR 240.17g–1(i); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33569 (June 18, 2007). Section 15E(b)(1) requires an NRSRO to promptly amend its application for registration if any information or document provided therein becomes materially inaccurate; however, (as discussed below) certain information does not have to be updated and other information must be updated only on an annual basis. *See* 15 U.S.C. 78o–7(b)(1); *see also* 15 U.S.C. 78o–7(b)(1) and 15 U.S.C. 78o–7(a)(1)(B)(ix). The Commission implemented this provision by adopting Form NRSRO and paragraph (e) of Rule 17g–1. *See* Form NRSRO and 17 CFR 240.17g–1(e); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33567, 33569–33582 (June 18, 2007).

[124] *See* 15 U.S.C. 78o–7(a)(1)(B)(i).

[125] *See* instructions for Exhibit 1.

[126] *See* 15 U.S.C. 78o–7(b)(1) and (2). In particular, Section 15E(b)(2) of the Exchange Act provides that not later than 90 days after the end of each calendar year, an NRSRO shall file with the Commission an amendment to its registration application, in such form as the Commission, by rule, may prescribe: (1) Certifying that the information and documents in the application for registration continue to be accurate; and (2) listing any material change that occurred to such information and documents during the previous calendar year. *See* 15 U.S.C. 78o–7(b)(2). The Commission implemented these provisions by adopting Form NRSRO and paragraph (f) of Rule 17g–1. *See* Form NRSRO and 17 CFR 240.17g–1(f); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33567, 33569–33582 (June 18, 2007).

[127] *See* instructions for Exhibit 1.

[128] *See* 15 U.S.C. 78c(a)(62)(A)(i).

[129] *See* 15 U.S.C. 78c(a)(62)(A)(ii).

[130] *See* 15 U.S.C. 78c(a)(62)(A)(iii).

[131] *See* 15 U.S.C. 78c(a)(62)(A)(iv). The instructions for Exhibit 1 broaden this class of credit rating to include a credit rating of any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. The intent of the instruction is to include in the class (and, therefore, in the performance statistics for the class) credit ratings for structured finance products that are outside the scope of the definition referenced in Section 3(a)(62)(A)(iv) of the Exchange Act. *See* 15 U.S.C. 78c(a)(62)(A)(iv) and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6458 (Feb. 9, 2009). As discussed below, the Commission is proposing to continue to use a broadened definition in the proposed new instructions for Exhibit 1. Moreover, the term "structured finance product" as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63832, footnote 3 (Dec. 4, 2009). This broad category of financial instrument includes an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act (15 U.S.C. 78c(a)(77)) and other types of structured debt instruments such as collateralized debt obligations CDOs, including synthetic and hybrid CDOs. *Id.* The term "Exchange Act-ABS" as used throughout this release refers more narrowly to an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act. 15 U.S.C. 78c(a)(77).

[132] *See* 15 U.S.C. 78c(a)(62)(A)(v).

as a whole): sovereigns, United States public finance, and international public finance.[133]

In addition, the instructions require that the performance measurement statistics "must at a minimum show the performance of credit ratings in each class over 1-year, 3-year, and 10-year periods (as applicable) through the most recent calendar year-end, including, as applicable: historical ratings transition and default rates within each of the credit rating categories,[134] notches, grades, or rankings used by the Applicant/NRSRO as an indicator of the assessment of the creditworthiness of an obligor, security, or money market instrument in each class of credit rating."[135] Paragraph (i) of Rule 17g–1 provides, among other things, that the NRSRO must make the annual certification publicly available within 10 business days of furnishing the annual certification to the Commission.[136]

Currently, the instructions for Exhibit 1 do not prescribe the methodology an NRSRO must use to calculate and present the performance measurement statistics; nor do the instructions limit the type of information that can be disclosed in the Exhibit.[137] Consequently, NRSROs have used different techniques to produce performance measurement statistics, which has limited the ability of investors and other users of credit ratings to compare the performance of credit ratings across NRSROs.[138] In addition, several NRSROs have included substantial amounts of information in Exhibit 1 about performance measurement statistics, in addition to transition and default rates. These practices make the presentation of information in the Exhibits widely inconsistent across NRSROs.

For the foregoing reasons and to implement Section 15E(q) of the Exchange Act, the Commission is proposing significant enhancements to the requirements to disclose performance measurement statistics in Exhibit 1.[139] The enhancements would confine the disclosures in the Exhibit to transition and default rates and certain limited supplemental information. Moreover, the enhancements would standardize the production and presentation of the transition and default rates.[140] Specifically, the Commission preliminarily believes that the transition and default rates in Exhibit 1 should be produced using a "single cohort approach."[141] As explained below, under this approach, an applicant and NRSRO, on an annual basis, would be required to compute how the credit ratings assigned to obligors, securities, and money market instruments in a particular class or subclass of credit rating that were outstanding on the date 1, 3, and 10 years prior to the most recent calendar year-end performed during the respective 1-, 3-, and 10-year time period. The Commission's intent in proposing these enhancements is to make the Exhibit 1 disclosures simply presented, easy to understand, uniform in appearance, and comparable across NRSROs.[142]

To implement this proposal, the Commission is proposing to substantially revise the instructions for Exhibit 1.[143] The proposed new instructions would be divided into paragraphs (1), (2), (3), and (4), some of which would have subparagraphs.[144] The proposed new paragraphs would contain specific instructions with respect to, among other things, how required information must be presented in the Exhibit (including the order of presentation) and how transition and default rates must be produced using a single cohort approach. As with all information that must be submitted in Form NRSRO and its Exhibits, applicants *and* NRSROs would be subject to these requirements.[145]

Proposed Paragraph (1) of the Instructions for Exhibit 1. Proposed new paragraph (1) of the instructions for Exhibit 1 would require an applicant and NRSRO to provide performance measurement statistics for each class and subclass of credit ratings for which the applicant is seeking registration as an NRSRO or the NRSRO is registered.[146] Consistent with the current instructions, proposed new paragraph (1) would require an applicant and NRSRO to provide transition and default rates for 1-, 3-, and 10-year periods for each applicable class or subclass of credit rating.[147] Also consistent with the current instructions, proposed new paragraph (1) would require an applicant and NRSRO to produce and present three separate transition and default statistics for each applicable class or subclass of credit rating; namely, for 1-, 3-, and 10-year time periods through the most recently ended calendar year. In addition, as part of the enhancements, an applicant and NRSRO would need to present the transition and default rates for each time period together in tabular form using a standard format (a "Transition/Default Matrix").[148]

Proposed new paragraph (1) would identify the classes and subclasses of credit ratings for which an applicant and NRSRO would need to produce Transition/Default Matrices, as

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[133] *See* instructions for Exhibit 1.

[134] The transition rate is the percentage of ratings at a given rating notch that transition to another specified rating notch over a given time period. Only ratings that were outstanding at the beginning of the time period are used in the calculation of the transition rate. Transition rates are generally used to measure the stability of the ratings. The default rate is the percentage of ratings at a given rating notch that have defaulted over a given time period. Only the ratings that were outstanding at the beginning of the time period are used in the calculation.

[135] *See* instructions for Exhibit 1.

[136] *See* 17 CFR.240.17g–1(i).

[137] When adopting Form NRSRO, the Commission explained that the instructions would not prescribe how NRSROs must calculate transition rates and default rates, noting that commenters had opposed a standard approach because NRSROs use different methodologies to determine credit ratings. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574 (June 18, 2007). The Commission stated that it intended to continue to consider the issue "to determine the feasibility, as well as the potential benefits and limitations, of devising measurements that would allow reliable comparisons of performance between NRSROs." *Id.* The Commission incrementally standardized the disclosure requirements in Exhibit 1 by amending the Form in 2009 to require an NRSRO to disclose transition and default rates for each class of credit rating for which it was registered and for 1-, 3-, and 10-year periods. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations* 74 FR at 6457–6459 (Feb. 9, 2009).

[138] *See, e.g., Securities and Exchange Commission: Action Needed to Improve Rating Agency Registration Program and Performance Related Disclosures,* GAO Report 10–782 (Sept. 2010) ("GAO Report 10–782").

[139] *See* 15 U.S.C. 78o–7(q) and proposed amendments to instructions for Exhibit 1.

[140] *See* 15 U.S.C. 78o–7(q)(2)(B).

[141] *See* GAO Report 10–782, pp. 27–37 (comparing, among other things, a single cohort approach—the model for the Commission's proposal—with an average cohort approach). *See also* GAO Report 10–782, p. 25, note 38 (identifying more complex techniques for calculating credit rating performance measurement statistics).

[142] *See* Section 15E(q)(2)(A) of the Exchange Act, which provides that the disclosure of information about the performance of credit ratings should be comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs. 15 U.S.C. 78o–7(q)(2)(A). *See also* Section 15E(q)(2)(B) of the Exchange Act, which provides that the disclosure of information about the performance of credit ratings should be clear and informative for investors having a wide range of sophistication who use or might use credit ratings. 15 U.S.C. 78o–7(q)(2)(B).

[143] *See* proposed amendments to instructions for Exhibit 1.

[144] *See* proposed new paragraphs (1), (2), (3), and (4) of the instructions for Exhibit 1.

[145] Form NRSRO must be used by a credit rating agency to apply for registration as an NRSRO and, once registered, an NRSRO must publicly disclose the information required in Form NRSRO and Exhibits 1 though 9. *See* 17 CFR 240.17g–1 and Instructions A.1, B, C, D, E, and F to Form NRSRO.

[146] *See* proposed new paragraph (1) of the instructions for Exhibit 1.

[147] *Compare* current instructions for Exhibit 1 with proposed new paragraph (1) of the instructions for Exhibit 1.

[148] *See* proposed new paragraph (1) of the instructions for Exhibit 1.

applicable. The identified classes would reference the classes of credit ratings for which an NRSRO can be registered as enumerated in the definition of NRSRO in Section 3(a)(62)(A) of the Exchange Act.[149] This would be consistent with the current instructions for Exhibit 1.[150] Moreover, also consistent with the current instructions, the class of credit ratings enumerated in Section 3(a)(62)(A)(iv) of the Exchange Act (issuers of certain asset-backed securities) would be expanded by the instructions in proposed new paragraph (1) to include a broader range of structured finance products than are within the scope of the definition of Section 3(a)(62)(A)(iv).[151]

However, to enhance the disclosure of transition and default rates in this class, the Commission is proposing to divide it into the following subclasses: RMBS;[152] commercial mortgage backed securities ("CMBS");[153] collateralized loan obligations ("CLOs");[154] CDOs;[155] issuances of asset-backed commercial paper conduits ("ABCP");[156] other asset-backed securities;[157] and other structured finance products.[158] The Commission preliminarily believes dividing the broad class of structured finance products into these subclasses would provide investors and other users of credit ratings with more useful information about the performance of an NRSRO's structured finance ratings.[159] For example, during the recent crisis, NRSROs assigned credit ratings to RMBS and CDOs that performed far differently than credit ratings of some other types of securitizations.[160] Consequently, if an applicant or NRSRO computed transition and default rates for structured finance products as a single class, the underperformance of certain subclasses could be muted by the better performance of other subclasses.

Consistent with the current instructions, proposed new paragraph (1) would divide the class of credit ratings enumerated in Section 3(a)(62)(A)(v) of the Exchange Act (issuers of government securities, municipal securities or securities issued by a foreign government) into three subclasses.[161] The subclasses would continue to be: sovereign issuers; United States public finance; and international public finance.[162]

In addition, consistent with the current instructions for an annual certification, proposed new paragraph (1) would provide that the performance measurement statistics must be updated yearly in the NRSRO's annual certification in accordance with Section 15E(b)(1)(A) and paragraph (f) of Rule 17g–1 (*i.e.,* a Form NRSRO with updated performance measurement statistics must be filed with the Commission no later than 90 days after the end of the calendar year).[163] Proposed new paragraph (1) also would remind an NRSRO that, pursuant to paragraph (i) of Rule 17g–1, the annual certification with the updated performance measurement statistics must be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site within 10 business days after the filing and that the NRSRO must make its up-to-date Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit.[164]

Proposed Paragraph (2) of the Instructions for Exhibit 1. Proposed new paragraph (2) of the instructions for Exhibit 1 would prescribe how an applicant and NRSRO must present the performance measurement statistics and other required information in the Exhibit.[165] Specifically, it would require that the Transition/Default Matrices for each applicable class and subclass of credit ratings be presented in the order that the classes and subclasses are identified in proposed paragraphs (1)(A) through (E) of Exhibit 1. In addition, the order of the Transition/Default Matrices for a given class or subclass would need to be: The 1-year matrix, the 3-year matrix, and then the 10-year matrix.

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[149] *Compare* 15 U.S.C. 78c(a)(62)(A)(i)–(v) with proposed new paragraphs (1)(A)–(E) of the instructions for Exhibit 1.

[150] *Compare* current instructions for Exhibit 1 with proposed new paragraph (1).

[151] *See* 15 U.S.C. 78c(a)(62)(A)(iv); *compare* current Instructions for Exhibit 1 with proposed new paragraph (1)(D).

[152] The Commission preliminarily intends that an "RMBS" for the purposes of this disclosure requirement would mean a securitization of primarily residential mortgages. *See* proposed new paragraph (1)(D)(i) of the instructions for Exhibit 1.

[153] The Commission preliminarily intends that a "CMBS" for the purposes of this disclosure requirement would mean a securitization of primarily commercial mortgages. *See* proposed new paragraph (1)(D)(ii) of the instructions for Exhibit 1.

[154] The Commission preliminarily intends that a "CLO" for the purposes of this disclosure requirement would mean a securitization of primarily commercial loans. *See* proposed new paragraph (1)(D)(iii) of the Instructions for Exhibit 1.

[155] The Commission preliminary intends that a "CDO" for the purposes of this disclosure requirement would mean a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset-backed securities, and corporate bonds. *See* proposed new paragraph (1)(D)(iv) of the instructions for Exhibit 1.

[156] The Commission preliminarily intends that "ABCP" for the purposes of this disclosure requirement would mean short term notes issued by a structure that securitizes a variety of financial assets (*e.g.,* trade receivables, credit card receivables), which secure the notes. *See* proposed new paragraph (1)(D)(v) of the instructions for Exhibit 1.

[157] The Commission preliminarily intends that the term "other asset-backed security" for the purposes of this disclosure requirement would mean a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans, or equipment leases. *See* proposed new paragraph (1)(D)(vi) of the instructions for Exhibit 1.

[158] The Commission preliminarily intends that "other structured finance product" for the purposes of this disclosure requirement would mean a structured finance product that does not fit into any of the other subclasses of structured products. *See* proposed new paragraph (1)(D)(vii) of the instructions for Exhibit 1.

[159] *See, e.g.,* GAO Report 10–782, p. 36 (noting that NRSROs active in rating structured finance generally present performance statistics for this class by sectors (*e.g.,* RMBS, CMBS and ABS) in their voluntary disclosures). *See also,* GAO Report 10–782, p. 36 (observing that the various structured finance sectors have risk characteristics that vary significantly and, therefore, that presenting performance statistics for the class as a whole "may not be useful.").

[160] *See, e.g., A Global Cross-Asset Report Card of Ratings Performance in Times of Stress,* Standard & Poor's (June 8, 2010).

[161] *See* 15 U.S.C. 78c(a)(62)(A)(v); *compare* current instructions for Exhibit 1, *with* proposed new paragraph (1)(E).

[162] *See* proposed new paragraph (1)(E) of the instructions for Exhibit 1.

[163] *See* Instruction F to Form NRSRO and proposed new paragraph (1); *see also* 15 U.S.C. 78o–7(b)(1)(A) and 17 CFR 240.17g–1(f). While paragraph (f) of Rule 17g–1 currently requires the annual certification to be "furnished," the Commission is proposing, as discussed below in Section II.M.1 of the release, to replace the term "furnished" with the term "filed" in a number of the NRSRO rules, including Rule 17g–1.

[164] *See* proposed new paragraph (1) of the instructions for Exhibit 1. As discussed below in Section II.E.1.b of this release, the Commission is proposing to amend paragraph (i) of Rule 17g–1 (17 CFR 240.17g–1(i)) to implement Section 15E(q)(2)(D) of the Exchange Act, which provides that the Commission's rules must require that the information about the performance of credit ratings be published and made freely available on an easily accessible portion of an NRSRO's Web site, and in writing when requested. *See* 15 U.S.C. 78o–7(q)(2)(D). As discussed below, the proposed amendment to paragraph (i) of Rule 17g–1 (17 CFR 240.17g–1(i)) would require an NRSRO to publish and make freely available on an easily accessible portion of its Web site all of Form NRSRO (*i.e.,* not just Exhibit 1). However, only Exhibit 1 would need to be made freely available in writing when requested.

[165] *See* proposed new paragraph (2) of the instructions for Exhibit 1.

Proposed new paragraph (2) also would provide that if the applicant or NRSRO did not issue credit ratings in a particular class or subclass for the length of time necessary to produce a Transition/Default Matrix for a 1-, 3-, or 10-year period, it would need to explain that fact in the location where the Transition/Default Matrix would have been presented in the Exhibit.[166]

Similar to the current Instructions, proposed paragraph (2) would require an applicant and NRSRO to clearly define in Exhibit 1, after the presentation of all applicable Transition/Default Matrices, each symbol, number, or score in the rating scale used by the applicant or NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings in any Transition/Default Matrix presented in the Exhibit.[167] The instructions also would require the applicant or NRSRO to clearly explain the conditions under which it classifies obligors, securities, or money market instruments as being in default. As discussed below, the Commission preliminarily believes that obligors, securities, and money market instruments that the applicant or NRSRO has classified as being in default as of the period start date for a Transition/Default Matrix should be excluded from the statistics in the matrix. Also, as discussed below, the Commission is proposing a standard definition of "default" for the purpose of calculating default rates. In addition, also as discussed below, where an applicant or NRSRO has a definition of "default" that is broader than this standard definition, the instructions would require the applicant or NRSRO to supplement the standard definition with its internal definition. For these reasons, the Commission believes it would be useful for investors and other users of credit ratings to know how an NRSRO defines default.

Similar to the current instructions, proposed paragraph (2) would require that an applicant and NRSRO provide in Exhibit 1 the uniform resource locator (URL) of its corporate Internet Web site where the credit rating histories required to be disclosed pursuant to paragraph (b) of Rule 17g–7 would be located (in the case of an applicant) or are located (in the case of an NRSRO).[168]

Finally, proposed paragraph (2) would provide that Exhibit 1 must contain no performance measurement statistics or information other than as described in, and required by, the instructions for Exhibit 1; except the applicant or NRSRO would be permitted to provide, after the presentation of all required Transition/Default Matrices and other required disclosures, Internet Web site URLs where other information relating to performance measurement statistics of the applicant or NRSRO is located.[169] As noted above, some NRSROs include substantial amounts of information in Exhibit 1 about the performance of their credit ratings. The Commission preliminarily believes information in addition to the disclosures that would be required under the enhancements to Exhibit 1 may be useful to investors and other users of credit ratings. However, the Commission also preliminarily believes disclosing this related information in Exhibit 1 would make the Exhibit less easy to use in terms of locating a particular Transition/Default Matrix and comparing it with the matrices of other NRSROs. Consequently, the Commission preliminarily believes an appropriate balance would be to exclude related information from the Exhibit but permit an NRSRO to cross-reference such information by providing Internet Web site URLs at the end of the Exhibit.

Proposed Paragraph (3) of the Instructions for Exhibit 1. Proposed paragraph (3) of the Instructions for Exhibit 1 would prescribe how an applicant and NRSRO must design a Transition/Default Matrix.[170] The instructions would require an applicant and NRSRO to produce a 1-, 3-, and 10-year Transition/Default Matrix for each applicable class and subclass of credit rating that resembles, in design, the Transition/Default Matrix in Figure 1 below.[171]

FIGURE 1—CORPORATE ISSUERS—10-YEAR TRANSITION AND DEFAULT RATES

[December 31, 2000 through December 31, 2010]

Credit rating scale	Number of ratings outstanding as of 12/31/2000	AAA	AA	A	BBB	BB	B	CCC	CC	C	Default	Paid off	Withdrawn (other)
AAA	10	50%	10%	.....	.....	.....	.....	.....	.....	.....	.....	40%	.....
AA	2000	1%	39%	12%	10%	8%	5%	4%	.....	.....	1%	19%	1%
A	4000	.....	6%	34%	15%	10%	6%	4%	3%	.....	2%	18%	2%
BBB	3600	.....	2%	9%	28%	15%	10%	6%	5%	1%	4%	17%	3%
BB	1000	.....	.....	2%	4%	20%	14%	5%	.....	.....	2%	16%	37%
B	500	.....	.....	1%	3%	6%	20%	20%	15%	.....	15%	15%	5%
CCC	300	.....	.....	.....	.....	4%	6%	15%	25%	20%	20%	4%	6%

[166] For example, if an NRSRO is registered in the corporate issuer class but has been issuing credit ratings for only 7 years in that class, it could not produce a 10-year Transition/Default Matrix for the class. Instead, the NRSRO would need to provide an explanation in the location where a 10-year Transition/Default Matrix would have been located (*i.e.,* after the 3-year matrix) that it had not been issuing credit ratings in that class for a sufficient amount of time to produce a 10-year Transition/Default Matrix.

[167] *Compare* current instructions for Exhibit 1, *with* proposed new paragraph (2). As discussed in Section II.J.2 of this release, the Commission is proposing to implement Section 938(a)(2) of the Dodd-Frank Act through paragraph (b)(2) of new Rule 17g–8, which would require an NRSRO to have policies and procedures reasonably designed to clearly define the meaning of any symbol used by the NRSRO to denote a credit rating, including in Exhibit 1 to Form NRSRO. *See* Public Law 111–203 § 938(a)(2) and proposed paragraph (b)(2) of new Rule 17g–8.

[168] *Compare* current instructions for Exhibit 1, *with* proposed new paragraph (2). As discussed below in Section II.E.2 of this release, the Commission is proposing to amend Rule 17g–2 (17 CFR 240.17g–2) and Rule 17g–7 (17 CFR 240.17g–7) to enhance the credit rating history disclosure requirements currently located in Rule 17g–2. Among other things, the Commission proposes relocating the credit rating history disclosure requirements from Rule 17g–2 to proposed new paragraph (b) of Rule 17g–7. *See* proposed amendments to paragraph (d) of Rule 17g–2 and proposed new paragraph (b) of Rule 17g–7.

[169] *See* proposed new paragraph (2) of the instructions for Exhibit 1.

[170] *See* proposed new paragraph (3) of the instructions for Exhibit 1.

[171] However, as explained below, the top row and first column would be based on the rating scale used by the applicant or NRSRO for the applicable class or subclass of credit ratings. For example, in the Sample Transition/Default Matrix, there are nine categories denoted by the symbols: AAA, AA, A, BBB, BB, B, CCC, CC, and C but no notches within those categories. An NRSRO that uses notches in its ratings scale (*e.g.,* AA+, AA, and AA-) would need to include the symbol for each notch in the individual cells of the first column and top row. However, as discussed below, the applicant or NRSRO would exclude a "default" category even if it uses such a category in its rating scale (though, as explained below, there would be a column with the heading "Default" in the matrix that would depict the percent of rated obligors, securities, and money market instruments that went into default during the relevant time period based on a standard definition of "default" in the instructions for Exhibit 1 (*i.e.,* not on the definition of the applicant or NRSRO).

FIGURE 1—CORPORATE ISSUERS—10-YEAR TRANSITION AND DEFAULT RATES—Continued
[December 31, 2000 through December 31, 2010]

Credit rating scale	Number of ratings outstanding as of 12/31/2000	AAA	AA	A	BBB	BB	B	CCC	CC	C	Default	Paid off	Withdrawn (other)
CC	200						2%	8%	10%	38%	30%	2%	10%
C	160							2%	8%	10%	67%	1%	12%
Total	11,770												

A sample Transition/Default Matrix similar to Figure 1 would be depicted in proposed new paragraph (3) to provide a visual representation of how to design and present a matrix.[172] In addition to the visual depiction, proposed new paragraph (3) would contain narrative instructions on how to design a matrix. First, the narrative instructions would prescribe the headings for each required column in a Transition/Default Matrix by referring to the cells in the top row of the table (the "header row").[173] The narrative instructions would require that the first and second cells in the header row contain the headings, respectively, "Credit Rating Scale" and "Number of Ratings Outstanding as of [insert the applicable date]."[174] The applicable date would be the date 1, 3, or 10 years prior to the most recent calendar year-end depending on whether the Transition/Default Matrix was being produced for a 1-, 3-, or 10-year period. The next sequence of cells in the header row would need to contain, in order from left to right, each credit rating symbol, number, or score used to denote a category and a notch within a category in the rating scale used by the applicant or NRSRO for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch.[175] The narrative instructions would require that the applicant or NRSRO not include a "default" category in the header row even if such a category is used in the rating scale.[176] The narrative instructions would require that the cells in the last three columns in the Transition/Default Matrix contain the headings, in order from left to right, "Default", "Paid Off", and "Withdrawn (other)."[177]

Next, the narrative instructions would require that the first column have a separate cell containing each credit rating symbol, number, or score in the rating scale used by the applicant or NRSRO to denote a category and a notch within a category for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch.[178] The applicant or NRSRO would be required to populate the column with the credit rating symbols, numbers, or scores in descending order from the highest to the lowest notch. Consistent with the header row, the narrative instructions also would require that the first column not include a "default" category if the applicant or NRSRO uses such a category in its rating scale. The last cell in the first column would need to contain the term "Total."[179]

Finally, the narrative instructions would require that the Transition/Default Matrix have a title identifying the applicable class or subclass of credit ratings, the period covered (1, 3, or 10 years), and start date and end date for the period.

Proposed Paragraph (4) of the Instructions for Exhibit 1. Proposed new paragraph (4) of the instructions for Exhibit 1 would prescribe how an applicant or NRSRO would need to populate a Transition/Default Matrix with data and statistical information.[180] First, proposed new paragraph (4)(A) would prescribe how to populate the cells of the second column headed "Number of Ratings Outstanding [as the Start Date]."[181] First, the applicant or NRSRO would be required to determine a start-date cohort consisting of the obligors, securities, and money market instruments in the applicable class or subclass of credit ratings that were assigned a credit rating (other than an expected or preliminary credit rating)[182] that was outstanding as of the start date for the applicable period (*i.e.,* the date 1, 3, or 10 years prior to the most recently ended calendar year).[183] Consequently, the start-date cohort would exclude any obligor, security, or money market instrument that received an initial credit rating in the class or subclass after the start date.[184]

In addition, the proposed instructions would provide that the applicant or NRSRO must exclude from the start-date cohort any obligors, securities, or money

[172] *See* proposed new paragraph (3) of the instructions for Exhibit 1.

[173] *See* proposed new paragraph (3) of the instructions for Exhibit 1.

[174] *See, e.g.,* the 1st and 2nd columns of the Sample Transition/Default Matrix in Figure 1.

[175] *See* proposed new paragraph (3) of the instructions for Exhibit 1; *see also* the 3rd through 11th columns of the Sample Transition/Default Matrix in Figure 1.

[176] The Commission's reasoning for proposing to exclude a category of "default" from the first column is explained below.

[177] *See* proposed new paragraph (3) of the instructions for Exhibit 1; *see also* the 12th through 14th columns of the Sample Transition/Default Matrix in Figure 1.

[178] *See, e.g.,* the first column of the Sample Transition/Default Matrix in Figure 1.

[179] *See* proposed new paragraph (3) of the instructions for Exhibit 1; *see also* the first column of the Sample Transition/Default Matrix in Figure 1.

[180] *See* proposed paragraph (4) of the instructions for Exhibit 1.

[181] *See* proposed paragraph (4)(A) of the instructions for Exhibit 1; *see also* the 2nd column of the Sample Transition/Default Matrix in Figure 1.

[182] "Expected" or "preliminary" credit ratings most commonly are issued by an NRSRO with respect to a structured finance product at the time the issuer commences the offering and typically are included in pre-sale reports. Expected or preliminary credit ratings may include a range of ratings, or any other indications of a credit rating used prior to the assignment of an initial credit rating for a new issuance. As such, the Commission preliminarily believes they should be excluded from the Transition/Default Matrices since the issuance of the "initial" credit rating is the first formal expression of the NRSRO's view of the relative creditworthiness of the obligor, security, or money market instrument.

[183] For example, if the most recent year end was December 31, 2010, the NRSRO would need to determine all the obligors, securities, and money market instruments with credit ratings outstanding in the relevant class as of December 31, 2009 (for the 1-year Transition/Default Matrix), December 31, 2007 (for the 3-year Transition/Default Matrix), and December 31, 2000 (for the 10-year Transition/Default Matrix). Because some obligors, securities, and money market instruments have characteristics that could cause them to be assigned more than one class of credit rating, the Commission is seeking comment below in Section II.M.4.a of this release on which class would be the most appropriate for certain types of obligors, securities, and money market instruments. Based on the comments received in response to those questions, the Commission may decide to prescribe by rule or identify through guidance how certain types of obligors, securities, and money market instruments should be classified for the purpose of determining start-date cohorts.

[184] For example, a Transition/Default Matrix covering a 10-year period would not include obligors, securities, and money market instruments that had been rated by the NRSRO for less than 10 years. However, these obligors, securities, and money instruments may be included in the start-date cohorts for the 1- and 3-year matrices for the class or subclass.

market instruments that were classified by the applicant or NRSRO as being in default as of the period start date.[185] The Commission preliminarily believes that the Transition/Default Matrices should not include obligors, securities, and money market instruments the applicant or NRSRO has classified as in default.[186] The reason is that, if an applicant or NRSRO classifies an obligor, security, or money market instrument as in default, the applicant or NRSRO is no longer assessing the relative likelihood that the obligor, security, or money market will continue to meet its obligations to make timely payments of principal and interest as they come due (*i.e.,* not default on its obligations). Consequently, as long as the obligor, security, or money market instrument continues to be classified as in default there is no credit rating performance to measure. However, if an obligor, security, or money market instrument is upgraded from the default category because, for example, the obligor emerges from a bankruptcy proceeding, the obligor would need to be included in a Transition/Default Matrix that has a start date after the upgrade.[187]

The next step, after determining the start-date cohort, would be to determine the number of obligors, securities, and money market instruments in the start-date cohort that, as of the start date, were assigned a credit rating at each notch in the rating scale used for the class or subclass.[188] The final step would be to populate the appropriate column cells with these amounts and in the bottom cell provide the total number of obligors, securities, and money market instruments in the start-date cohort. As discussed next, determining these totals would be necessary to compute the percentages used to populate the rows of the Transition/Default Matrix. Moreover, the Commission preliminarily believes it would be useful to investors and other users of credit ratings to include these amounts in the matrix. This would inform them of the sample sizes of the obligors, securities, and money market instruments used to generate the transition and default rates for the notches entered in the matrix.[189]

Proposed new paragraph (4)(B) would focus on the horizontal axis of the Transition/Default Matrix by prescribing how an applicant and NRSRO would need to populate the rows representing sequentially in descending order the notches in the credit rating scale used for the applicable class or subclass of credit ratings.[190] The instructions would provide that each row must contain percents indicating the cumulative credit rating outcomes of the obligors, securities, and money market instruments assigned a credit rating at that notch.[191] The instructions also would provide that the percents in a row must add up to 100%.[192]

As discussed in detail below, proposed new paragraph (4)(B) would identify five potential credit rating outcomes: (1) The obligor, security, or money market instrument was assigned the same credit rating as of the period end date; (2) the obligor, security, or money market instrument was assigned a different credit rating as of the period end date; (3) the obligor, security, or money market instrument defaulted at any time during the period; (4) the obligor, security, or money market instrument paid off during the period; or (5) the applicant or NRSRO withdrew a credit rating of the obligor, security, or

[185] *See* proposed paragraph (4)(A) of the instructions for Exhibit 1. As indicated, the determination of whether an obligor, security, or money market instrument should be excluded from the start date cohort would be based on the definition of "default" used by the applicant or NRSRO. As discussed below, in determining the outcome of a credit rating assigned to an obligor, security, and money market instrument during the applicable time period covered by a Transition/Default Matrix, the applicant or NRSRO would need to use a standard definition of "default" in proposed new paragraph (4)(B)(iii) as opposed to its own definition. The Commission recognizes that the use of a standard definition of "default" to determine the outcome of a credit rating during the applicable time period could result in an obligor, security, or money market instrument being included in the start-date cohort that, as of the start date, would be classified as in "default" under the proposed definition of "default" in paragraph (4)(B)(iii). In other words, the applicant or NRSRO may not have classified the obligor, security, or money market instrument as in default as of the start date using its own narrower definition. In this case, the Commission preliminarily believes such an obligor, security, or money market instrument should be included in the start-date cohort since the applicant or NRSRO had assigned it a credit rating representing a relative assessment of the likelihood of default (rather than a classification of default) on the start date. Therefore, the performance of the applicant or NRSRO in rating that obligor, security, or money market instrument should be incorporated into the default rate.

[186] This does not mean that the obligor, security or money market instrument would never be reflected in default rates. For example, assume that as of the date 10 years prior to the most recently ended calendar year-end an obligor in the corporate issuer class was assigned a credit rating of BBB. This obligor would be included in the start-date cohort for the 10-year Transition/Default Matrix and grouped with the other obligors, securities, and/or money market instruments assigned BBB ratings. Further, assume that during the first seven years of the 10-year period, the credit rating of the obligor was downgraded from BBB to BB (in year 2), from BB to B (in year 5) and from B to CCC (in year 7). Having an outstanding credit rating of CCC in year 7, the obligor would be included in the start-date cohort for the 3-year Transition/Default Matrix and grouped with obligors, securities, and money market instruments assigned CCC ratings. Finally assume the obligor defaults in year 8. For the purposes of the 10- and 3-year Transition/Default Matrices, the obligor would need to be classified as having defaulted and included in the default rates calculated for those matrices. However, because the obligor would be in default as of the period start date for the 1-year Transition/Default Matrix, it would not be included in the start-date cohort for that matrix.

[187] *See* proposed paragraph (4)(A) of the instructions for Exhibit 1. For example, assume an obligor was classified as in default by the NRSRO as of the start date for the 10-year Transition/Default Matrix. The obligor would be excluded from the start-date cohort for the matrix. Assume further that two years later the obligor emerged from a bankruptcy proceeding after a re-structuring. At that point in time, the NRSRO upgraded the obligor from the default category by assigning it a credit rating of BBB. Assume that three years later the NRSRO upgraded the obligor's credit rating from BBB to A- and that it retained that rating for the next five years. In this case, the obligor would be included in the start-date cohorts for the 1- and 3-year Transition/Default Matrices and grouped with the obligors, securities, and money market instruments assigned A − credit ratings.

[188] *See* proposed paragraph (4)(A) of the instructions for Exhibit 1. For the class of credit ratings in the Sample Transition/Default Matrix in Figure 1, this would mean determining how many of the obligors, securities, and money market instruments in the start-date cohort were assigned a credit rating of AAA, AA, A, BBB, BB, B, CCC, CC, and C as of the start date. For example, the Sample Transition/Default Matrix in Figure 1 shows a total start-date cohort of 11,770 obligors, securities, and/or money market instruments. Within this cohort and as of the 12/31/2000 start date, 10 were rated AAA, 2000 were rated AA, 4000 were rated A, 3600 were rated BBB, 1000 were rated BB, 500 were rated B, 300 were rated CCC, 200 were rated CC, and 16 were rated C.

[189] For example, if the outcome for a notch with 10 obligors is that 5 defaulted, the default rate reflected on the Transition/Default Matrix for that notch would be 50%. Similarly, if the outcome of a notch with 5,000 obligors is that 2,500 defaulted, the default rate for that notch would be 50% as well. Investors and other users of credit ratings might conclude that 2,500 obligors going into default reflects significantly worse performance than 5 obligors. Consequently, if the sample sizes were not reflected on the matrix, investors and other users of credit ratings could draw conclusions about the comparative performance of NRSROs that are distorted by varying sample sizes.

[190] *See* proposed new paragraph (4)(B) of the instructions for Exhibit 1; *see also* the 2nd through the 10th rows of the Sample Transition/Default Matrix in Figure 1 (AAA through C).

[191] For example, in the Sample Transition/Default Matrix in Figure 1, cumulative outcomes would need to determined for: the 10 obligors, securities, and/or money market instruments in the 2nd row (AAA); the 2000 obligors, securities, and/or money market instruments in the 3rd row (AA); the 4000 obligors, securities, and/or money market instruments in the 4th row (A); the 3600 obligors, securities, and/or money market instruments in the 5th row (BBB); the 1000 obligors, securities, and/or money market instruments in the 6th row (BB); the 300 obligors, securities, and/or money market instruments in the 8th row (CCC); the 200 obligors, securities, and/or money market instruments in the 9th row (CC); and the 160 obligors, securities, and/or money market instruments in the 10th row (C).

[192] *See* proposed new paragraph (4)(B) of the instructions for Exhibit 1. For example, in the Sample Transition/Default Matrix in Figure 1, the percents in the row representing the AAA category are (from left to right): 50%, 10%, and 40%, which when added together equal 100%.

money market instrument at any time during the period for a reason other than that the obligor, security, or money market instrument defaulted or "paid off."[193] Because the percents in a row would need to add up to 100%, each obligor, security, and money market instrument reflected in the numbers contained in the 2nd column of a Transition/Default Matrix could be assigned only one credit rating outcome.[194] Proposed paragraphs (4)(B)(i) through (v) would instruct applicants and NRSROs how to compute the percents used to populate each row representing a notch in the rating scale in the Transition/Default Matrix.[195]

Proposed new paragraph (4)(B)(i) would require the applicant or NRSRO to determine the number of obligors, securities, and money market instruments assigned a credit rating at the notch represented by the row as of the period start date that were assigned a credit rating at the same notch as of the period end date.[196] The instructions would require that: (1) this number be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date; and (2) the percent be entered in the column representing the same notch.[197]

An obligor, security, or money market instrument could have the same credit rating as of the period end-date because the credit rating did not change between the start date and the end date or the credit rating transitioned to one or more other notches during the relevant period but transitioned back to the start-date notch where it remained as of the period end date. Consequently, proposed new paragraph (4)(B)(i) would clarify that, to determine this amount, the applicant or NRSRO would need to use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.[198]

Proposed new paragraph (4)(B)(ii) would require the applicant or NRSRO to determine the number of obligors, securities, and money market instruments assigned a credit rating at the notch represented by the row as of the period start date that were assigned a credit rating at each other notch as of the period end date.[199] The instructions would require that: (1) these numbers be expressed as percents of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date; and (2) the percents be entered in the columns representing each notch.[200] The instructions in the paragraph would clarify that, to determine these numbers, the applicant or NRSRO would need to use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end-date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.[201]

Proposed new paragraph (4)(B)(iii) would require an applicant and NRSRO to determine the total number of obligors, securities, and money market instruments assigned a credit rating at the notch represented by the row as of the period start date that went into *Default* at any time during the applicable time period.[202] The instructions would require that: (1) This number be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date; and (2) the percent to be entered in the *Default* column.[203]

As indicated, the classification of *Default* would be triggered if the obligor, security, or money market instrument went into *Default* at any time during the period.[204] This is different than the classifications in proposed paragraphs (4)(B)(i) and (ii), which are based solely on the end-date status of the obligor, security or money market instrument.[205] This period-long approach is designed to address concerns that an applicant or NRSRO might withdraw a credit rating of an obligor, security, or money market instrument that went into *Default* during the period in order to omit the obligor, security, or money market instrument from the Transition/Default

[193] *See* proposed new paragraphs (4)(B)(i)–(v) of the Instructions for Exhibit 1.

[194] *See* proposed new paragraph (4)(B) of the instructions for Exhibit 1; *see also* the 2nd column in the Sample Transition/Default Table in Figure 1.

[195] *See* proposed new paragraphs (4)(B)(i)–(v) of the instructions for Exhibit 1.

[196] *See* proposed new paragraph (4)(B)(i) of the instructions for Exhibit 1.

[197] For example, the 2nd row of the Sample Transition/Default Matrix in Figure 1 represents the AAA notch in the applicable rating scale. As reflected in the matrix, 10 obligors, securities, and/or money market instruments were assigned a credit rating of AAA as of the 12/31/2000 start date. Of these 10, 5 (or 50%) were assigned a credit rating of AAA as of the 12/31/2010 end date. Accordingly, 50% is input in the AAA column.

[198] *See* proposed new paragraph (4)(B)(i) of the instructions for Exhibit 1. For example, assume an obligor was assigned a credit rating of BBB as of the start date of a 10-year Transition/Default Matrix. Assume further that three years after the start date, the credit rating was upgraded to AA but then eight years after the start date the credit rating was downgraded to A, and nine years after the start date the credit rating was downgraded to BBB where it remained as of the period end date. For the purpose of the 10-year Transition/Default Matrix, the outcome assigned this obligor would be that it had the same credit rating as of the period end date. However, the transitions that occurred in years eight and nine would be reflected, respectively, in the 3- and 1-year Transitions/Default Matrices for the class or subclass of credit ratings. In other words, the credit rating history for this obligor would reflect volatility over the short term but stability over the long term.

[199] *See* proposed new paragraph (4)(B)(ii) of the instructions for Exhibit 1.

[200] *See* proposed new paragraph (4)(B)(ii) of the instructions for Exhibit 1. For example, the 3rd row of the Sample Transition/Default Matrix in Figure 1 represents the AA notch in the applicable rating scale. As reflected in the matrix, 2000 obligors, securities, and/or money market instruments were assigned a credit rating of AA as of the 12/31/2000 start date. Of these 2000, as of the period end date: 2 (or 1%) were assigned a credit rating of AAA; 240 (or 12%) were assigned a credit rating of A; 200 (or 10%) were assigned a credit rating of BBB; 160 (or 8%) were assigned a credit rating of BB; 100 (or 5%) were assigned a credit rating of B; and 80 (or 4%) were assigned a credit rating of CCC. Accordingly, 1% is input in the AAA column, 12% in the A column, 10% in the BBB column, 8% in the BB column, 5% in the B column, and 4% in the CCC column.

[201] *See* proposed new paragraph (4)(B)(ii) of the instructions for Exhibit 1. This instruction would mirror the instruction in proposed new paragraph (4)(B)(i). As explained above, the applicant or NRSRO would need to reflect in the transition rate for a given notch the credit ratings assigned to the obligors, securities, and money market instruments at that notch as of the period end-date (rather than transitional credit ratings assigned during the period). For example, in the Sample Transition/Default Matrix in Figure 1, there were 2000 obligors, securities and/or money market instruments assigned AA ratings as of 12/31/2000. As of 12/31/2010, 4% (or 80) of the obligors, securities, and/or money market instruments were assigned a credit rating of CCC. The path by which these obligors, securities, or money market instruments arrived at a CCC credit rating as of the period end date could have been through a series of rating actions that occurred during the 10 year period (*e.g.,* being downgraded to A, then BBB, then BB, then B, and then CCC). The transitional credit ratings of these 80 obligors, securities, and money market instruments between the AA credit rating as of 12/31/2000 and the CCC credit rating as of 12/31/2010 would not be reflected in the transition rate for the AA notch.

[202] *See* proposed new paragraph (4)(B)(iii) of the instructions for Exhibit 1. This release denotes the proposed standardized definition of the term "default" as "*Default*" to distinguish the definition and its meaning from other uses of the term "default" herein.

[203] *See* proposed new paragraph (4)(B)(iii) of the instructions for Exhibit 1. For example, the 7th row of the Sample Transition/Default Matrix in Figure 1 represents the B notch in the applicable rating scale. As reflected in the matrix, 500 obligors, securities, and/or money market instruments were assigned a credit rating of B as of the 12/31/2000 start date. Of these 500, 75 (or 15%) were classified as having gone into *Default* during period (12/31/2000–12/31/2010). Accordingly, 15% is input in the *Default* column.

[204] *See* proposed new paragraph (4)(B)(iii) of the instructions for Exhibit 1.

[205] *See* proposed new paragraphs (4)(B)(i) and (ii) of the instructions for Exhibit 1.

Matrix and, therefore, improve the default rates presented in the matrix.[206]

The Commission preliminarily believes it would be appropriate to prescribe a standard definition of *Default* in proposed new paragraph (4)(B)(iii).[207] This standard definition would need to be used by all applicants and NRSROs to determine whether an obligor, security, or money market instrument in the start-date cohort defaulted. The Commission's goal in proposing a standard definition is to make the default rates calculated and disclosed by the NRSROs more readily comparable.[208] The Commission is concerned that if applicants or NRSROs use their own definitions of "default," differences in those definitions may result in the applicants and NRSROs inconsistently classifying obligors, securities, and money market instruments as in default.[209] For example, an NRSRO that uses a narrow definition may show better (*i.e.,* lower) default rates than an NRSRO using a broader definition even though the former's credit ratings would perform no better under the broader definition. The Commission preliminarily believes that potential variances in how applicants and NRSROs may define "default" could make comparing performance across NRSROs difficult and could be a way to manipulate the data to produce more favorable results.

The Commission recognizes that a proposal to use a standard definition of default may raise concerns among the NRSROs. For example, in the past, NRSROs have argued against prescribing a standardized approach for calculating transition and default rates given the different meanings of their credit ratings and definitions of default.[210] Nonetheless, as explained above, the Commission preliminarily believes a standard definition is the preferred approach to make disclosures of default rates comparable and, therefore, useful to investors and other users of credit ratings. However, the Commission is requesting comment below on the proposed use of a standard definition, including whether there are alternatives that could achieve the Commission's goal of comparability.

Proposed new paragraph (4)(B)(iii) would prescribe two disjunctive definitions of *Default.*[211] An applicant and NRSRO would need to classify an obligor, security, or money market instrument as having gone into *Default* if the conditions in either or both of the definitions were met. The first definition would apply if the obligor failed to timely pay principal or interest due according to the terms of an obligation, or the issuer of the security or money market instrument failed to timely pay principal or interest due according to the terms of the security or money market instrument.[212] This would be the standard definition of *Default* used by the applicant or NRSRO. The goal of this proposed definition is to establish a minimum baseline for classifying an obligor, security, or money market instrument as having gone into *Default.* The Commission's intent is to avoid a situation in which applicants and NRSROs use varying definitions of default, which, as noted above, could result in some NRSROs using materially narrower definitions in order to produce more favorable default rates.[213]

The second definition would apply if the applicant or NRSRO classified the obligor, security, or money market instrument as having gone into default using its own definition of "default."[214] This proposal is designed to supplement the standard definition to address a situation where the NRSRO's definition of "default" is broader than the standard definition and, as a consequence, the NRSRO has classified an obligor, security, or money market instrument as having gone into default during the time period even though, under the standard definition, the applicant or NRSRO would not need to make a *Default* classification. The Commission preliminarily believes that the standard definition of *Default,* as proposed, is broad and would apply to most cases commonly understood as a default. Consequently, the Commission preliminarily believes a classification of default under the second definition would be rare.[215]

Finally, proposed new paragraph (4)(B)(iii) also would clarify that an obligor, security, or money market instrument that goes into in *Default* must be classified as in *Default* even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument at a notch above default in its rating scale on or after the event of *Default* or withdrew the credit rating on or after the event of *Default.*[216] This proposed clarification is designed to affirm the requirement that an obligor, security, or money market instrument that goes into *Default* at any time during the period covered by the Transition/Default Matrix must be included in the default rate for the applicable category of credit rating

[206] *See* 15 U.S.C. 78o–7(q)(2)(C) (providing that the disclosures include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the NRSRO). The following provides an example of how withdrawals can be used to impact a default rate. In the Sample Transition/Default Matrix in Figure 1, the *Default* rate over the 10-year period for the 3600 obligors, securities, and money market instruments assigned a BBB rating as of the period start date is 4%. This means that 144 obligors, securities, or money market instruments assigned a credit rating at this notch as of the start date went into *Default* during the period (144/3600 = 4%). If the default rate was determined by the credit assigned to these 144 obligors as of the period end date, the NRSRO could withdraw, for example, 100 of these credit ratings after default. Consequently, only 44 of the obligors, securities, and/or money market instruments would be in the default category as of the period end-date and, therefore, the default rate for the BBB notch would be 1.2% instead of 4% (44/3600 = 1.2%).

[207] *See* proposed new paragraph (4)(B)(iii) of the Instructions for Exhibit 1.

[208] *See* 15 U.S.C. 78o–7(q)(2)(A) (providing that the Commission's rules shall require disclosures that are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs).

[209] *See, e.g.,* GAO Report 10–782, p. 38 ("NRSROs can differ in how they define default. Therefore, some agencies may have higher default rates than others as a result of a broader set of criteria for determining that a default has occurred.").

[210] *See, e.g.,* letter dated March 12, 2007 from Jeanne M. Dering, Executive Vice President, Moody's Investors Services and letter dated March 12, 2007 from Vickie A. Tillman, Executive Vice President, Standard & Poor's (commenting on proposals in *Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574 (Feb. 9, 2007).

[211] *See* proposed new paragraphs (4)(B)(iii)(a) and (b) of the instructions for Exhibit 1.

[212] *See* proposed new paragraphs (4)(B)(iii)(a) of the instructions for Exhibit 1.

[213] Because this would be a standard definition, the applicant or NRSRO would need to classify the obligor, security, or money market instrument as having gone into *Default* even if the applicant or NRSRO assigned a credit rating other than default to the obligor, security, or money market instrument at the time of the event of *Default* because, for example, the applicant or NRSRO uses a narrower definition of "default."

[214] *See* proposed new paragraph (4)(B)(iii) of the instructions for Exhibit 1.

[215] The Commission recognizes that supplementing the standard definition in proposed paragraph (4)(B)(iii) with the definition used by the applicant or NRSRO could potentially import an idiosyncratic element to a given NRSRO's *Default* classifications. However, any such impact only could increase the number of obligors, securities, and money market instruments classified as having gone into *Default* (*i.e.,* an internal definition only could expand the standard definition). The Commission is not concerned if an applicant or NRSRO over-classifies (relative to other applicants or NRSROs) the number of obligors, securities, or money market instruments that went into *Default,* provided all NRSROs are using the standard definition as a baseline. Moreover, the Commission believes any such over-classifications would be *de minimis* given the broad scope of the standard definition. Furthermore, each obligor, security, and money market instrument in the start-date cohort must be assigned 1 of 5 potential outcomes. Consequently, if an applicant or NRSRO has classified an obligor, security, or money market instrument as having gone into default based on its own definition a classification of *Default* would be the most appropriate outcome among the 5 possible outcomes identified in proposed new paragraph (4)(B) of the instructions for Exhibit 1.

[216] *See* proposed new paragraph (4)(B)(iii) of the instructions for Exhibit 1.

irrespective of the post-*Default* status of the obligor, security, or money market instrument.

Proposed new paragraph (4)(B)(iv) would require an applicant and NRSRO to determine the number of obligors, securities, and money market instruments assigned a credit rating at the notch represented by the row as of the period start date that *Paid Off* at any time during the applicable time period.[217] The instructions would require that: (1) This amount be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date; and (2) the percent be entered in the *Paid Off* column.[218] As with the *Default* classification, this classification would be made if the obligor, security, or money market instrument *Paid Off* at any time during the period.[219]

Proposed new paragraph (4)(B)(iv) would define *Paid Off* using two different sets of conditions: (1) One set applicable to obligors; and (2) one set applicable to securities and money market instruments.[220] The reason is that a credit rating of an "obligor" typically means a credit rating of the entity with respect to all obligations of the entity; whereas a credit rating of a "security" or "money market instrument" means a credit rating of a specific debt instrument such as a bond, note, or issuance of commercial paper.[221] Consequently, as used generally, a credit rating of an obligor does not relate to a single obligation with a term of maturity but rather to the obligor's overall ability to meet any obligations as they come due. Therefore, an obligor credit rating normally would not be classified as *Paid Off* since it does not reference a specific obligation that will mature. However, the Commission preliminarily believes it is possible that an applicant or NRSRO could determine a credit rating relating directly to an obligor's ability to meet a specific obligation with a definite term to maturity.[222] In this case, the obligor could be classified as having *Paid Off* given that the obligation to which the credit rating relates is identifiable and was extinguished during the period. At the same time, the Commission's objective is to avoid inadvertently proposing a definition that would permit an NRSRO to classify an obligor assigned a typical obligor credit rating as having *Paid Off* because it extinguished one of its obligations during the time period.[223]

For these reasons, the Commission proposes that paragraph (4)(B)(iv)(a) provide that an applicant and NRSRO may classify an obligor as having *Paid Off* only if the applicant or NRSRO assigned the obligor a credit rating with respect to a single specifically identified obligation; the obligor extinguished the obligation during the applicable time period by paying in full all outstanding principal and interest due on the obligation according to the terms of the obligation (*e.g.,* because the obligation matured, was called, or was prepaid); and the applicant or NRSRO withdrew the credit rating because the obligation was extinguished.[224] The third clause of the proposed definition (that the NRSRO withdrew the credit rating) would be designed to ensure that the credit rating, in fact, did relate to the single specifically identified obligation. If the applicant or NRSRO continued to assign a credit rating to the obligor after the obligation was extinguished, it would suggest that the credit rating related to the obligor's creditworthiness in a broader sense (*i.e.,* not with respect to the single obligation).

As for securities and money market instruments, proposed paragraph (4)(B)(iv)(b) would provide that the applicant or NRSRO may classify a security or money market instrument as having *Paid Off* only if the issuer of the security or money market instrument extinguished its obligation with respect to the security or money market instrument during the applicable time period by paying in full all outstanding principal and interest due according to the terms of the security or money market instrument (*e.g.,* because the security or money market instrument matured, was called, or was prepaid); and the applicant or NRSRO withdrew the credit rating for the security or money market instrument because the obligation was extinguished.[225] Consequently, the proposed definition would mirror the second and third elements of the definition of *Paid Off* as it relates to the credit rating of an obligor.[226]

Proposed new paragraph (4)(B)(v) would require the applicant or NRSRO to determine the number of obligors, securities, and money market instruments assigned a credit rating at the notch represented by the row as of the period start date for which the applicant or NRSRO withdrew a credit rating assigned to the obligor, security, or money market instrument at any time during the applicable time period for a reason other than *Default* or *Paid-Off.*[227] The instructions would require that: (1) This amount be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date; and (2) the percent be entered in the *Withdrawn (other)* column.[228] The instructions would provide that the applicant or NRSRO must classify the obligor, security, or money market instrument as *Withdrawn (other)* even if the applicant or NRSRO assigned a credit rating to the obligor, security, or money market instrument after withdrawing the credit rating.[229]

There are legitimate reasons to withdraw a credit rating assigned to an obligor, security, or money market instrument. For example, an NRSRO might withdraw a credit rating because the rated obligor or issuer of the rated security or money market instrument stopped paying for the surveillance of the credit rating or because the NRSRO issued and was monitoring the credit rating on an unsolicited basis and no longer wanted to devote resources to

[217] *See* proposed new paragraph (4)(B)(iv) of the instructions for Exhibit 1.

[218] *Id.* For example, the 9th row of the Sample Transition/Default Matrix in Figure 1 represents the CC notch in the applicable rating scale. As reflected in the matrix, 200 obligors, securities, and/or money market instruments were assigned a credit rating of CC as of the 12/31/2000 start date. Of these 200, 4 (or 2%) were classified as having *Paid Off* during period (12/31/2000–12/31/2010). Accordingly, 2% is input in the *Paid Off* column.

[219] *See* proposed new paragraph (4)(B)(iv) of the instructions for Exhibit 1.

[220] *See* proposed new paragraphs (4)(B)(iv)(a) and (b) of the instructions for Exhibit 1.

[221] As discussed earlier, this understanding of the meaning of an "obligor" credit rating is based, in part, on the definition of "credit rating" in Section 3(a)(60) of the Exchange Act ("The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments."). *See* 15 U.S.C. 78o–7(a)(60).

[222] For example, an NRSRO could issue a credit rating that relates solely to the likelihood that the obligor would meet an obligation to pay principal and interest on a specific term loan.

[223] For example, an applicant or NRSRO could seek to improve its default rates by classifying obligors as having paid off because they extinguished one obligation during the relevant period before defaulting on other obligations.

[224] *See* proposed new paragraph (4)(B)(iv)(a) of the instructions for Exhibit 1.

[225] *See* proposed new paragraph (4)(B)(iv)(b) of the instructions for Exhibit 1.

[226] *Compare* proposed new paragraphs (4)(B)(iv)(a) and (b) of the instructions for Exhibit 1.

[227] *See* proposed new paragraph (4)(B)(v) of the instructions for Exhibit 1.

[228] *Id.* For example, the 4th row of the Sample Transition/Default Matrix in Figure 1 represents the A notch in the applicable rating scale. As reflected in the matrix, 4000 obligors, securities, and/or money market instruments were assigned a credit rating of A as of the 12/31/2000 start date. Of these 4000, 80 (or 2%) were classified as having been *Withdrawn (other)* during the period (12/31/2000–12/31/2010). Accordingly, 2% is input in the *Withdrawn (other)* column.

[229] *See* proposed new paragraph (4)(B)(v) of the instructions for Exhibit 1.

monitoring it. However, the Commission also is concerned that an applicant or NRSRO could withdraw a credit rating assigned to an obligor, security, or money market instrument to make its transition or default rates appear more favorable.[230] Therefore, the Commission proposes requiring an applicant and NRSRO to disclose the percent of obligors, securities, and money market instruments for which the applicant or NRSRO withdrew the credit rating for reasons other than *Default* or *Paid Off* during the period covered by the Transition/Default Matrix.[231] Investors and other users of credit ratings could use the percents of withdrawn credit ratings to assess whether the number of withdrawals impacted the transition and default rates entered in the Transition/Default Matrix.[232] They also would be able to compare historical withdrawal percents of an NRSRO and across all NRSROs. If an NRSRO has a disproportionate number of withdrawals for one period as compared to prior periods or as compared to those of other NRSROs, investors and other users of credit ratings could consider that factor in assessing the veracity of the transition and default rates entered in the NRSRO's Transition/Default Matrix.

Request for Comment

The Commission generally requests comment on all aspects of the proposed new instructions for Exhibit 1 to Form NRSRO. The Commission also seeks comment on the following:

1. With respect to prescribing a standard method of calculating transition and default rates, would a single cohort approach (rather than an average cohort approach or some other approach) [233] be the most appropriate way to make the transition and default rates clear and informative for investors having a wide range of sophistication who use or might use credit ratings? Commenters should identify and explain any other approach they believe could be used to prescribe a standard process for calculating and presenting transition and default rates that would better achieve this goal.

2. What practical issues should the Commission consider in implementing a standard process for calculating and presenting transition and default rates? For example, would the variances in the procedures and methodologies NRSROs use to determine credit ratings raise practical issues in terms of adhering to a standard process for calculating and presenting transition and default rates? In addition, would the variances in the meanings and definitions NRSROs ascribe to the notches of credit ratings in their rating scales raise practical issues in terms of adhering to a standard process for calculating and presenting transition and default rates? How could the proposal be modified to address any practical issues identified without undermining the goal of comparability?

3. With respect to any practical issues identified in response to the solicitation of comment in question #2, would the proposed single cohort approach for calculating and presenting transition and default rates heighten or lessen the issues relative to other possible approaches such as the average cohort approach? Commenters should identify and explain any other approach they believe could be used to prescribe a standard process for calculating and presenting transition and default rates that would raise the least practical issues.

4. Would the proposals require an NRSRO to disclose proprietary information? If so, describe the type or types of proprietary information. Also, describe potential ways to address this issue.

5. Would the proposals have an impact on competition? For example, would they advantage or disadvantage a certain type of NRSRO? Could they potentially alter the behavior of NRSROs? For example, could the proposals cause certain NRSROs to stop determining a particular type of credit rating? If so, describe whether there would be any costs or negative impacts as a result and, if so, how such costs or negative impacts could be addressed.

6. How would the proposals differ from the way NRSROs currently calculate and present transition and default rates? For example, would they be more or less sophisticated than current methods? Would they be more or less burdensome than current methods? Describe the differences. Furthermore, describe the benefits of a standardized approach in terms of making the disclosure more useful to investors and other users of credit ratings.

7. Would dividing the class of credit ratings for structured finance products into the subclasses identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 provide investors and other users of credit ratings with more useful information about the performance of an NRSRO's structured finance ratings? For example, should the Commission continue to require transition and default rates for this class only as a whole? If so, explain how this would provide more useful information about the performance of an NRSRO's structured finance ratings.

8. Are the subclasses of credit ratings for structured finance products identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 the most appropriate way to stratify this class of credit ratings? For example, should the "other-ABS" subclass be divided up into subclasses based on the assets underlying the ABS (*i.e.,* auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans or equipment leases)?

[230] For example, the 5th row of the Sample Transition/Default Matrix in Figure 1 represents the BBB notch in the applicable rating scale. 3600 obligors, securities, and/or money market instruments were assigned a credit rating at this notch as of the start date. The transition rates from this notch to a lower notch are: 15% (BB), 10% (B), 6% (CCC), 5% (CC), and 1% (C). Taken together, this means that 37% (or 1332) of the obligors, securities, and money market instruments were assigned a credit rating as of the end-date that was below BBB (*i.e.,* in categories commonly referred to as "non-investment grade" or "speculative"). To lower the transition rates to "non-investment grade" categories, the credit ratings for 400 obligors, securities, or money market instruments assigned a BBB credit rating as of the start date could be withdrawn. This would reduce the transition rate to notches below BBB from 37% (1332/3600) to 26% (932/3600).

[231] *See* proposed new paragraph (4)(B)(v) of the instructions for Exhibit 1.

[232] For example, the 6th row of the Sample Transition/Default Matrix in Figure 1 represents the BB notch in the applicable rating scale. 1000 obligors, securities, and/or money market instruments were assigned a credit rating at this notch as of the start date. Of these 1000, 370 (or 37%) had their credit ratings withdrawn during the period (12/31/2000–12/31/2010). This amount is much larger than the withdrawal rates for the other notches, which range from 0% (AAA notch) to 12% (C notch). Moreover, the default rate for the BB notch (2%) is an anomaly in that it is lower than the default rate for the next highest notch BBB (4%). Normally, lower notches would be expected to have higher default rates. In addition, the AAA, AA, A, and BBB notches all have single digit default rates (ranging from 0% to 4%); whereas the notches below BBB all have double digit default rates (ranging from 15% to 67%), except for the BB notch (which, as noted, has a default rate of 2%). Furthermore, the two-notch downgrade transition rate for the BB notch is 5% (BB to CCC). This appears to be an anomaly given that the two-notch downgrade rates for the other notches are: 10% for the AA notch (AA to BBB); 10% for the A notch (A to BB); 10% for the BBB notch (BBB to B); 15% for the B notch (B to CC); 20% for the CCC notch (CCC to C); and 30% for the CC notch (CC to *Default*). An investor or other user of credit ratings reviewing this matrix could conclude that the withdrawal of credit ratings at the BB notch for reasons other than *Default* or *Paid Off* materially impacted the transition and default rates for the BB notch. The high rate of withdrawals in this instance also could be the focus of examination by the Commission staff.

[233] An average cohort approach for calculating rating transitions or default statistics consists of taking the average of several cohorts over a longer time period. For example, the one-year average transition rate would be calculated by taking the average transition rate from several one-year cohorts over a given time period.

In addition, are there other classes of structured finance products that should be identified in proposed paragraph (1)(D) of the instructions for Exhibit 1?

9. Are the descriptions of the subclasses of credit ratings for structured finance products identified in proposed paragraphs (1)(D)(i) through (vii) of the instructions for Exhibit 1 sufficiently clear to provide an applicant and NRSRO with guidance as to which credit ratings should be included in the production of the Transition/Default Matrices for each subclass? How could the descriptions be modified to make them clearer and provide better guidance?

10. Would the design and presentation of a Transition/Default Matrix prescribed in proposed paragraph (3) of the instructions for Exhibit 1 be clear and informative for investors having a wide range of sophistication who use or might use credit ratings? How could the design and presentation of the Transition/Default Matrix be modified to better achieve this goal?

11. Would the design and presentation of a Transition/Default Matrix prescribed in proposed paragraph (3) of the instructions for Exhibit 1 be an appropriate way to present transition and default rates? How could the design and presentation of the Transition/Default Matrix be modified to better accommodate these statistics?

12. Are the instructions in proposed paragraphs (1), (2), (3), and (4) of Exhibit 1 sufficiently clear in terms of requirements for producing the required Transition/Default Matrices and presenting necessary information in the Exhibit? For example, are instructions in the paragraphs sufficiently clear in terms of the requirements for populating the columns and rows of a Transition/Default Matrix? How could the instructions be modified to make them clearer and provide better guidance?

13. Should obligors, securities, and money market instruments that an applicant or NRSRO has classified as being in default as of the start date of a period covered by a Transition/Default Matrix be excluded from the start-date cohort for that matrix? If not, explain the rationale for including them.

14. Should the start-date cohorts for the Transition/Default Matrices be comprised of obligors only (*i.e.,* not include securities or money market instruments assigned credit ratings in the class or subclass)? For example, if the credit ratings of securities or money instruments issued by an obligor are simply a function of the credit rating of the obligor, would it be sufficient to include only the obligor in the start-date cohort? If so, should this be the case for all classes and subclasses of credit ratings or for certain classes and subclasses? For example, the credit ratings assigned to securities and money market instruments in the structured finance class often are based on differing levels of credit enhancement specific to each tranche of a security issued by the obligor. Consequently, in such a case, the credit rating of the security or money market instrument issued would not be a function solely or primarily of the credit rating of the obligor.

15. Commenters are referred to the questions in Section II.M.4.a of this release with respect Items 6 and 7 of Form NRSRO and how certain types of obligors, securities, and money market instruments should be classified for purposes of providing approximate amounts of credit ratings outstanding in each class of credit rating for which an applicant is seeking registration (Item 6) or an NRSRO is registered (Item 7)? In responding to those questions, commenters should consider how proposed classifications could be applied to determining the composition of start-date cohorts for the purposes of the proposed enhancements to Exhibit 1.

16. Should the default rates in the Transition/Default Matrices be determined using the proposed standard definition of *Default*? For example, would the use of a standard definition raise practical issues in light of the different meanings that NRSROs ascribe to the notches in their credit rating scales or the different definitions of "default" they utilize? How could the proposal be modified to address any practical issues identified without undermining the goal of comparability?

17. Is the proposed standard definition of *Default* sufficiently broad to apply to most, if not all, events commonly understood as constituting a default? For example, should the definition explicitly include that the obligor or issuer of the security or money market instrument is in a bankruptcy proceeding or would this be redundant in that the definition already provides that the obligor or issuer of the security has failed to timely pay interest or principal due? In addition, should the definition explicitly include events that would constitute a default due to a breach of a covenant unrelated to the failure to timely pay interest or principal due on a security or money market instrument (*e.g.,* a covenant might provide that a default by the issuer on a bank loan to a third party or a default by an affiliate of the issuer would constitute a default with respect to a rated security of the issuer)? Would it be appropriate to include such cross-default provisions as part of the definition of the *Default* in the instructions for Exhibit 1? For example, if the issuer continued to make timely payments of interest and principal to the holders of the security notwithstanding the cross-defaults, would it nonetheless be appropriate to classify the security as in *Default*? If so, how could the proposed definition be modified to make it broad enough to apply to all instances of default? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.

18. Should the proposed standard definition of *Default* be refined to distinguish between degrees of default severity? For example, should the definition distinguish between a situation where an obligor or the issuer of a security or money market instrument has failed to make a timely payment of interest or principal that potentially could be cured and the situation where the obligor or issuer of the security or money market instrument is no longer able to cure a failed payment of interest or principal or is in a bankruptcy proceeding? How could the proposed definition be modified to account for relative degrees of default severity and how should such modifications be incorporated into the proposed instructions for calculating default statistics?

19. Is the proposed standard definition of *Paid Off* sufficiently broad to apply to most, if not all, events commonly understood as constituting the extinguishment of an obligation upon which a credit rating is based? If not, how could the proposed definition be modified to make it broad enough to apply to all instances that should, for the purposes of transition and default rates, be classified as having *Paid Off*? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.

20. Would the proposed treatment for *Withdrawn (other)* credit ratings in the Transition/Default Matrices sufficiently

address the concern that an applicant or NRSRO might use withdrawals to make its transition and default rates appear more favorable? For example, should the Commission, by rule, require an NRSRO to monitor an obligor, security, or money market instrument after withdrawal in order to classify whether the obligor, security, or money market instrument went into *Default* or *Paid Off*? If so, how long should the applicant or NRSRO be required to monitor the obligor, security, or money market instrument? Alternatively, should the applicant or NRSRO be required to explain and disclose in Exhibit 1 the reason why it withdrew the credit ratings in the given class or subclass of credit ratings? If so, how much detail should the applicant or NRSRO provide in the description? Should the requirement provide for an NRSRO to be able to use its own definition if the standard definition would not be feasible given the NRSRO's procedures and methodologies for determining credit ratings? If so, should the NRSRO be required to make disclosures about why it is using its own definition? Describe the nature of such disclosures.

b. Proposed Amendments to Rule 17g–1

Section 15E(q)(2)(D) of the Exchange Act provides that the Commission's rules must require an NRSRO to make the information about the performance of credit ratings freely available and disclose it on an easily accessible portion of its Web site, and in writing when requested.[234] The Commission proposes to implement Section 15E(q)(2)(D) by amending paragraph (i) of Rule 17g–1.[235] Paragraph (i) requires an NRSRO to make its current Form NRSRO and information and documents submitted in Exhibits 1 through 9 publicly available on its Web site or through another comparable, readily accessible means within 10 business days of being granted an initial registration or a registration in an additional class of credit ratings, and within 10 business days of furnishing a Form NRSRO to update information on the Form, to provide the annual certification, and to withdraw a registration.[236] These requirements implemented Section 15E(a)(3) of the Exchange Act,[237] which provides, among other things, that the Commission shall, by rule, require an NRSRO, upon the granting of a registration, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment, publicly available on its Internet Web site, or through another comparable, readily accessible means.[238]

Although Section 15E(q)(2)(D) only addresses disclosures of information about the performance of credit ratings, the Commission is proposing to amend paragraph (i) of Rule 17g–1 to require an NRSRO to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site. This would avoid having separate requirements for the Exhibit 1 performance statistics and the rest of Form NRSRO and the other public Exhibits. The Commission preliminarily believes users of credit ratings would benefit if Form NRSRO and all the public Exhibits were disclosed together in the same manner. In addition, the Commission preliminarily believes applying the requirement to disclose the information on an "easily accessible" portion of the NRSRO's corporate Internet Web site would assist investors and other users of credit ratings by making it easier to locate a Form NRSRO. For example, some corporate Internet Web sites contain large amounts of information, some of which must be accessed by navigating through multiple Web pages. The Commission believes Form NRSRO and the public Exhibits should be easy for investors and other users of credit ratings to locate when they access an NRSRO's corporate Internet Web site. In this regard, the Commission preliminarily believes that a Form NRSRO would be on an "easily accessible" portion of a Web site if it could be accessed through a clearly and prominently labeled hyperlink to the Form on the home-page of the NRSRO's corporate Internet Web site.

The proposed amendment to paragraph (i) also would remove the option for an NRSRO to make its Form NRSRO publicly available "through another comparable, readily accessible means" as an alternative to Internet disclosure. The Commission preliminarily believes there is no alternative means of disclosure that makes information as "readily accessible" as (and, therefore, is comparable to) an Internet Web site. This view is supported by the fact that all NRSROs currently comply with paragraph (i) of Rule 17g–1 by making their Form NRSROs available on their corporate Internet Web sites.[239] The Commission, therefore, is proposing amending paragraph (i) to require that the disclosure of Form NRSRO and its public Exhibits be made on an NRSRO's corporate Internet Web site without exception.[240] In addition, to implement Section 15E(q)(2)(D) of the Exchange Act, the Commission is proposing to amend paragraph (i) to provide that Exhibit 1 must be made freely available in writing, when requested.

Finally, the Commission notes that throughout Form NRSRO and the Instructions to Form NRSRO there are references to the current requirement in paragraph (i) to make Form NRSRO and information and documents submitted in Exhibits 1 through 9 "publicly available on [the NRSRO's] Web site or through another comparable, readily accessible means.[241] The Commission proposes amending all these references so that they would mirror the text of the proposed amendment to paragraph (i).

Request for Comment

The Commission generally requests comment on all aspects of the proposed amendments to paragraph (i) of Rule 17g–1. The Commission also seeks comment on the following:

1. Is there any reason why the Commission should not apply the requirement to make an NRSRO's performance statistics "freely available on an easily accessible portion of its Web site" to Form NRSRO and the public Exhibits as a whole? For example, should the requirement apply only to Exhibit 1?

2. Is the Commission correct in its preliminary belief that a Form NRSRO would be on an "easily accessible" portion of a Web site if it could be accessed through a clearly and prominently labeled hyperlink to the Form on the home-page of the NRSRO's corporate Internet Web site? Are there other portions of an NRSRO's corporate Internet Web site that, provided the NRSRO placed a hyperlink to Form NRSRO on such portion of the Web site, should be deemed "easily accessible"?

3. Is there another means of making Form NRSRO publicly available besides the Internet that should be deemed "another comparable, readily accessible means"? If so, identify the means and explain the potential advantages of permitting it as a means of disclosure.

[234] *See* 15 U.S.C. 78o–7(q)(2)(D).

[235] *See* proposed amendments to paragraph (i) of Rule 17g–1.

[236] *See* 17 CFR 240.17g–1(i).

[237] 15 U.S.C. 78o–7(a)(3).

[238] *See* 15 U.S.C. 78o–7(a)(3).

[239] *See Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 18–19.

[240] *See* proposed amendments to paragraph (i) of Rule 17g–1.

[241] *See, e.g.,* references in Item 5, in the Note to Item 6.C, Item 8, and Item 9 of Form NRSRO and Instruction A.3 and Instruction H to Form NRSRO.

4. With respect to the proposed requirement that Exhibit 1 be made freely available in writing, when requested, how should an NRSRO meet such a request? For example, should an NRSRO be required to mail a written copy of Exhibit 1 to a party requesting the Exhibit? If so, would it be appropriate to permit the NRSRO to charge reasonable handling and postage fees? For example, would allowing an NRSRO to charge a reasonable handling and postage fee discourage requests that are not based on a legitimate need to obtain Exhibit 1 in paper form? In this regard, the Commission notes that Exhibit 1 currently can be immediately accessed through an NRSRO's corporate Internet Web site and, under the proposed amendments to paragraph (i) of Rule 17g–1, would need to be posted on an easily accessible portion of the NRSRO's corporate Internet Web site. Consequently, why would a person have a legitimate need to request that an NRSRO provide Exhibit 1 in paper form (which would take time to process the request and send out the Exhibit) when it could be obtained immediately through the Internet?

2. Proposed Enhancements to Rating Histories Disclosures

Paragraph (a)(8) of Rule 17g–2 requires an NRSRO to make and retain a record that, "for each outstanding credit rating, shows all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key ("CIK") number of the rated obligor." [242] An NRSRO is required to retain this record for three years pursuant to paragraph (c) of Rule 17g–2.[243]

In addition, paragraph (d) of Rule 17g–2 requires the NRSRO to publicly disclose certain of this information as well. Specifically, paragraph (d)(2) of Rule 17g–2 requires an NRSRO to "make and keep publicly available on its corporate Internet Web site in an eXtensible Business Reporting Language ("XBRL") format" the information required to be documented pursuant to paragraph (a)(8) of Rule 17g–2 for 10% of the outstanding credit ratings, selected on a random basis, in each class of credit rating for which the NRSRO is registered if the credit rating was paid for by the obligor being rated or by the issuer, underwriter, or sponsor of the security being rated ("issuer-paid" credit ratings) and the NRSRO has 500 or more such issuer-paid credit ratings outstanding in that class (the "10% Rule").[244] Paragraph (d)(2) further provides that any ratings action required to be disclosed need not be made public less than six months from the date the action is taken.[245] This six-month grace period is designed to preserve the ability of NRSROs to sell data feeds to the portfolios of their current credit ratings by making the information disclosed in the 10% Rule out-of-date.[246] Paragraph (d)(2) also requires that, if a credit rating made public pursuant to the rule is withdrawn or the rated instrument matures, the NRSRO must randomly select a new outstanding credit rating from that class of credit ratings in order to maintain the 10% disclosure threshold.[247] Finally, paragraph (d)(2) provides that in making the information available on its corporate Internet Web site, the NRSRO must use the List of XBRL Tags for NRSROs as specified on the Commission's Internet Web site.[248]

Paragraph (d)(3) of Rule 17g–2 requires an NRSRO to make publicly available on its corporate Internet Web site information required to be documented pursuant to paragraph (a)(8) of the rule for any credit rating initially determined by the NRSRO on or after June 26, 2007, the effective date of the Rating Agency Act of 2006 (the "100% Rule").[249] The 100% Rule applies to all types of credit ratings, as opposed to the 10% Rule, which is limited to issuer-paid credit ratings. However, paragraphs (d)(3)(i)(B) and (C) prescribe different grace periods for when an NRSRO must disclose a rating action depending on whether or not it was issuer-paid.[250] Specifically, paragraph (d)(3)(i)(B) provides that if the credit rating is issuer-paid, then the grace period is 12 months after the date the action is taken.[251] Similar to the 6-month grace period in the 10% Rule, this 12-month grace is designed to preserve the ability of NRSROs to sell data feeds to their portfolios of current outstanding credit ratings by making the information disclosed in the 100% Rule out-of-date.[252] For all non-issuer paid credit ratings, paragraph (d)(3)(i)(C) provides a grace period of 24 months after the date the rating action is taken. This longer grace period is designed to address the "subscriber-paid" business model in which the NRSRO makes its credit ratings available for a fee rather than for free.[253] Paragraph (d)(3)(ii) of Rule 17g–2 requires the NRSRO to disclose the ratings history information on its corporate Internet Web site in an XBRL format using the List of XBRL Tags for NRSROs as published by the Commission on its Internet Web site.[254]

The Commission is proposing amendments designed to enhance the utility of the 100% Rule.[255] Moreover, in light of the proposed amendments to the 100% Rule (discussed below) and Exhibit 1 (discussed above), the Commission is proposing to repeal the 10% Rule. The 10% Rule does not permit comparability across NRSROs

[242] 17 CFR 240.17–2(a)(8). A CIK number has ten-digits and is assigned to uniquely identify a filer using the Commission's EDGAR system.

[243] *See* 17 CFR 240.17g–2(c).

[244] 17 CFR 240.17–2(d)(2).

[245] *Id.*

[246] The fact that the disclosure involves only a random sample of 10% of the outstanding credit ratings also limits the utility of the information disclosed in terms of serving as a substitute to purchasing a data feed to the NRSRO's current portfolio of outstanding credit ratings.

[247] 17 CFR 240.17–2(d)(2).

[248] *Id.*

[249] 17 CFR 240.17–2(d)(3).

[250] 17 CFR 240.17–2(d)(3)(i)(B) and (C).

[251] 17 CFR 240.17–2(d)(3)(i)(B).

[252] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63842 (Dec. 4, 2009) (discussing the grace periods in the rule).

[253] *Id.*

[254] At the time the 10% Rule became effective (which preceded the 100% Rule), the Commission had not published the List of XBRL Tags. Consequently, the Commission issued a notice that NRSROs could use any machine readable format to publish the ratings history information required by the 10% Rule. *See Notice Regarding the Requirement to Use eXtensible Business Reporting Language Format to Make Publicly Available the Information Required Pursuant to Rule 17g–2(d) of the Exchange Act,* Exchange Act Release No. 60451 (Aug. 5, 2009). On August 27, 2010, the Commission provided notice that the List of XBRL tags required to be used for purposes of the 10% Rule and, the subsequently adopted 100% Rule, was available on the Commission's Internet Web site. *See Notice Regarding the Requirement to Use eXtensible Business Reporting Language Format to Make Publicly Available the Information Required Pursuant to Rule 17g–2(d) of the Exchange Act,* Exchange Act Release No. 62784 (Aug. 27, 2010), 75 FR 53988 (Sept. 2, 2010). Information about the List of XBRL Tags is located at the following page on the Commission's Web site: *http://www.sec.gov/spotlight/xbrl/nrsro-implementation-guide.shtml.* The publication of this notice in the **Federal Register** triggered the 60-day period after which NRSROs were required to begin using an XBRL format for purposes of the two rules. The 60-day period ended on November 1, 2010. The XBRL Tags identified by the Commission include mandatory tags with respect to the information specifically identified in paragraph (a)(8) of Rule 17g–2 (17 CFR 240.17g–2(a)(8)) (*i.e.,* the date of the rating action, the credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the CIK number of the rated obligor). The XBRL Tags also identify additional information that could be tagged by the NRSRO to enhance the disclosure.

[255] *See, e.g.,* GAO Report 10–782, p. 40 ("However, we found that the data disclosed under the 10 percent sample disclosure requirement do not contain enough information to construct comparable performance statistics and are not representative of the population of credit ratings at each NRSRO and that the data disclosed under the 100 percent disclosure requirement likely present similar issues.").

because it captures only issuer-paid credit ratings in a class of credit ratings where there are 500 or more such ratings and only if two or more NRSROs randomly select the same rated obligor, issuer, or money instrument to be included in the sample.[256] Moreover, the Commission understands that the 10% Rule may not produce sufficient "raw data" to allow third parties to generate independent performance statistics.[257] The goal of the rule was to provide some information about how an NRSRO's credit ratings performed, particularly ratings assigned to obligors, securities and money market instruments that had been rated for 10 or 20 years. The Commission now preliminarily believes that, in light of the proposed enhancements to Exhibit 1 and the 100% Rule, the 10% Rule would provide minimal incremental benefit to investors and other users of credit ratings in terms of providing information about the performance of a given NRSRO's credit ratings.

With respect to the 100% Rule, the Commission is proposing its provisions be moved from Rule 17g–2 (the NRSRO recordkeeping rule) to Rule 17g–7.[258] Currently, Rule 17g–7 requires an NRSRO to disclose certain information in any report accompanying an asset-backed security.[259] In other words, the rule requires an NRSRO to publicly disclose information outside of Form NRSRO (the predominant NRSRO disclosure rule). Similarly, the 100% Rule in its current form (and as proposed) also requires (and would require) an NRSRO to disclose information outside of Form NRSRO. Finally, as discussed below in Section II.G of this release, Section 15E(s) of the Exchange Act provides that the Commission shall adopt rules to require an NRSRO to disclose further information outside of Form NRSRO.[260] The Commission is proposing to consolidate non-Form NRSRO disclosure rules by codifying them in Rule 17g–7.[261]

The proposed enhancements to the 100% Rule would be codified in new paragraph (b) of Rule 17g–7.[262] Proposed paragraph (b)(1) would require, among other things, that the NRSRO publicly disclose the ratings history information for free on an easily accessible portion of its corporate Internet Web site.[263] This would implement Section 15E(q)(2)(D) of the Exchange Act and, by using the "easily accessible portion" language, enhance the current requirement of the 100% Rule that the ratings history information be disclosed on the NRSRO's corporate Internet Web site.[264] As discussed above in Section II.E.1.b of this release, some Internet Web sites contain large amounts of information, some of which must be accessed by navigating through multiple web pages.[265] Consequently, as discussed, the Commission preliminary believes that Form NRSRO would be on an "easily accessible" portion of an Internet Web site if it could be accessed through a clearly and prominently labeled hyperlink to the Form on the homepage of the NRSRO's corporate Internet Web site. The Commission preliminarily believes that the same holds true for the disclosure of the data file or files containing the information that would be required by the enhanced 100% Rule.[266]

The next enhancement to the 100% Rule proposed by the Commission is to substantially broaden the scope of credit ratings that would be subject to the disclosure requirements. The Commission's intent is to require disclosure of information about all outstanding credit ratings in each class and subclass of credit ratings for which the NRSRO is registered but within certain prescribed time frames. As noted above, the 100% Rule currently only captures credit ratings where the NRSRO initially determined a credit rating for the obligor, security, or money market instrument on or after June 26, 2007.[267] This means that obligors, securities, and money market instruments assigned a credit rating by the NRSRO before that date are excluded entirely from the disclosure even if a rating action is taken with respect to the obligor, security, or money market instrument after that date. Consequently, if a user of the disclosures wanted to calculate a transition or default rate for a given NRSRO's credit ratings, the user could not compile a start-date cohort that included all obligors, securities, or money market instruments assigned a credit as of the start date.[268] The Commission's proposal would be designed to address this issue.[269]

In particular, the Commission is proposing that the rule no longer be limited to the disclosure of histories for credit ratings where the NRSRO initially

[256] *See, e.g.,* GAO Report 10–782, pp. 40–47.

[257] *Id.*

[258] 17 CFR 240.17g–7.

[259] *See* 17 CFR 240.17g–7, which requires an NRSRO to include in any report accompanying a credit rating with respect to an asset-backed security, as that term is defined in Section 3(a)(77) of the Exchange Act (15 U.S.C. 78c(a)(77)) a description of: the representations, warranties and enforcement mechanisms available to investors; and how they differ from the representations, warranties and enforcement mechanisms in issuances of similar securities. *Id.*

[260] *See* 15 U.S.C. 78o–7(s).

[261] *See* 15 U.S.C. 78o–7 and 15 U.S.C. 78q. The current provisions of Rule 17g–7 would be incorporated into new paragraph (a) of Rule 17g–7 as discussed below in Section II.G of this release. The Commission notes that some NRSROs may (or could in the future) have additional disclosure requirements based on their status as another type of registrant or because they are part of a company that has filing obligations under other provisions of the securities laws. The Commission does not intend to consolidate such other disclosure requirements in Rule 17g–7.

[262] *See* proposed new paragraph (b) of Rule 17g–7.

[263] *See* proposed new paragraph (b)(1) of Rule 17g–7.

[264] *See* 15 U.S.C. 78o–7(q)(2)(D); *compare* 17 CFR 240.17g–7(d)(3)(i)(A), *with* proposed new paragraph (b) of Rule 17g–7. As discussed above, Section 15E(q)(2)(D) of the Exchange Act provides that the Commission's rules shall require the information about the performance of credit ratings be published and made freely available by the NRSRO, on an easily accessible portion of its Web site, and in writing, when requested. *Id.* The Commission, however, preliminarily believes that the "in writing" requirement would not be feasible if applied to the disclosures of rating histories. First, the data file containing the disclosures would need to be constantly updated by the NRSRO as new rating actions are added. Thus, it would not remain static like the Exhibit 1 performance measurement statistics which are updated annually. Consequently, by the time a party received a written copy of the disclosure, it likely would not be up-to-date. Second, the amount of information in the data file would be substantial (particularly for NRSROs that have issued hundreds of thousands of credit ratings) and increase over time. For these reasons, the Commission preliminarily believes that converting the information in the electronic disclosure to written form and mailing it to the party making the request would be impractical and not particularly useful. In terms of utility, as discussed below, the electronic disclosure of the data would need to be made using an XBRL format. The Commission preliminarily believes this would be a much more efficient and practical medium for accessing and analyzing the information rather than obtaining it in paper form. Consequently, the Commission preliminarily believes that the benefits, if any, to requiring a written disclosure would be limited. However, the Commission is requesting comment below on this issue.

[265] *See* Section II.E.1.b of this release proposing amendments to paragraph (i) of Rule 17g–1 to implement Section 15E(q)(2)(D) of the Exchange Act. 15 U.S.C. 78o–7(q)(2)(D). Under the proposals, an NRSRO would need to make Form NRSRO and Exhibits 1 through 9 "freely available on an easily accessible portion of its website." *See* proposed amendments to paragraph (i) of Rule 17g–1.

[266] *See* 15 U.S.C. 78o–7(q)(2)(D).

[267] *See* 17 CFR 240.17g–2(d)(3)(i)(A).

[268] *See, e.g.,* GAO Report 10–782, p. 45. This issue is particularly acute when the NRSRO determines credit ratings for obligors in only one class of credit ratings. As discussed earlier, obligor credit ratings typically provide an assessment of the relative creditworthiness of the obligor as an entity for all its obligations. Thus, it is different from a credit rating for a security or money instrument that typically has a single finite obligation that will mature, be called, or be prepaid (if it does not default). An NRSRO that primarily issued obligor credit ratings in a class and initially rated them prior to June 26, 2007 would never have to include the rating histories of these obligors in the disclosure. For example, the NRSRO could be monitoring credit ratings for the same group of obligors that were initially rated 10 to 20 years ago. In this case, the NRSRO would have no ratings histories to disclose.

[269] *See, e.g.,* GAO Report 10–782, pp. 45–46.

determined a credit rating for the obligor, security, or money market instrument on or after June 26, 2007.[270] Instead, the rule, as proposed, would apply to any credit rating that was outstanding as of June 26, 2007, but the rating histories disclosed for these credit ratings would not need to include information about actions taken before June 26, 2007.[271] Moreover, in order to immediately include these credit ratings in the disclosure, the proposed rule would require the NRSRO to disclose the credit rating assigned to the obligor, security, or money market instrument and associated information as of June 26, 2007. Specifically, proposed paragraph (b)(1)(i) of Rule 17g–7 would require an NRSRO to disclose each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the NRSRO is registered that was *outstanding* as of June 26, 2007 and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.[272] Consequently, an NRSRO would need to include in the XBRL file through which it makes the rating history disclosures all outstanding credit ratings as of June 26, 2007 (*i.e.,* not wait until a new rating action was taken with respect to the credit rating) and then disclose subsequent actions taken with respect to those credit ratings. In other words, the histories for this class of credit ratings would begin on June 26, 2007. This would mean that the disclosures would not contain complete histories for many credit ratings.[273] However, the disclosures would capture all outstanding credit ratings in each class of credit ratings for which the NRSRO is registered and, therefore, market participants could immediately begin computing short-term transition and default rates using start-date cohorts that include all the obligors, securities, and money market instruments assigned a credit rating in a given class.[274]

Proposed paragraph (b)(1)(ii) of Rule 17g–7 would contain the existing requirement in the 100% Rule that an NRSRO disclose rating histories for each credit rating in every class of credit ratings for which the NRSRO is registered that was initially determined on or after June 26, 2007 and any subsequent rating action taken with respect to such credit ratings.[275] Specifically, proposed paragraph (b)(1)(ii) would require the NRSRO to disclose each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the NRSRO is registered that was initially determined on or after June 26, 2007, and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument. Consequently, the disclosure mandated under proposed paragraph (b)(1) of Rule 17g–7 would capture all credit ratings outstanding as of June 26, 2007 (regardless of when the obligor, security, or money market instrument was initially assigned a credit rating) and the subsequent rating actions taken with respect to those credit ratings as well as all credit ratings initially determined on or after that date and the subsequent rating actions taken with respect to those credit ratings.[276]

The next enhancement to the 100% Rule proposed by the Commission is to increase the number and scope of the data fields that must be disclosed about a rating action.[277] Specifically, proposed paragraph (b)(2) of Rule 17g–7 would identify 7 categories of data that would need to be disclosed when a credit rating action is published pursuant to proposed new paragraph (b)(1) of Rule 17g–7. In addition, some of the categories would have sub-categories.[278] The goal would be to make the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs.[279]

Proposed new paragraph (b)(2)(i) of Rule 17g–7 would identify the first category of data: namely, the identity of the NRSRO disclosing the rating action.[280] This may seem unnecessary as the identity of the NRSRO making the disclosure should be obvious. However, as noted above, the NRSRO would need to assign an XBRL Tag to each item of information, including the identity of the NRSRO. Including and tagging the identity of the NRSRO would assist users who download and combine data files of multiple NRSROs to sort credit ratings by a given NRSRO.

Proposed new paragraph (b)(2)(ii) of Rule 17g–7 would identify the second category of data: namely, the date of the rating action.[281] This proposed

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[270] *See* proposed new paragraph (b)(1)(i) of Rule 17g–7.

[271] The Commission notes, however, that an NRSRO could voluntarily disclose more rating history information than required by the current rule or the proposed amendment to the rule.

[272] *Id.*

[273] For example, assume an obligor was initially rated in AA on June 26, 2000. Thereafter, the rating was downgraded to AA- on June 26 2003, to A on June 26, 2005, and to BBB on June 26, 2008. Under the proposed rule, the ratings history disclosure would cross the June 26, 2007 threshold with an A rating. The history for this obligor would omit the initial AA rating on June 26, 2000 and the downgrades to AA- and A on June 26, 2003 and June 26, 2005, respectively. Therefore, the first event in the rating history would be that the obligor was assigned an A rating as of June 26, 2007. The next event in the rating history would be the downgrade of the credit rating to BBB on June 26, 2008.

[274] For example, a user of the credit rating histories would be able to generate transition and default rates for a period having a start date as far back as June 26, 2007. In doing so, the user would be able to compile a start-date cohort consisting of all the obligors, securities, and money market instruments assigned an outstanding credit rating in a given class as of June 26, 2007. The user could compute transition and default rates over short-term periods (*i.e.,* 1 or 2 years) in the near term and for longer periods as time progresses and more ratings actions over a longer time horizon are added to the disclosure. In addition, the user could calculate transition or default rates using a different process than the single cohort approach proposed for the Exhibit 1 disclosures. For example, the user could begin calculating short-term transition and default rates using a rolling average in which start-date cohorts are identified each month (*e.g.,* June 26, 2007, July 26, 2007, August 26, 2007, and so on).

[275] *See* proposed new paragraph (b)(1)(ii) of Rule 17g–7.

[276] *See* proposed new paragraph (b)(1) of Rule 17g–7.

[277] *See* proposed new paragraph (b)(2) of Rule 17g–7.

[278] If adopted, the Commission would need to update the List of XBRL Tags to include some of the new data fields; whereas other of the fields are covered by existing Tags, including by some of the voluntary Tags.

[279] *See, e.g.,* GAO Report 10–782, p. 41 ("First, SEC [sic] did not specify the data fields the NRSROs were to disclose in the rule, and the data fields provided by the NRSROs were not always sufficient to identify a complete rating history for ratings in each of the seven samples. If users cannot identify the rating history for each rating in the sample, they cannot develop performance measures that track how an issuer's credit rating evolves.").

[280] *See* proposed new paragraph (b)(2)(i) of Rule 17g–7.

[281] *See* proposed new paragraph (b)(2)(ii) of Rule 17g–7. The Commission notes that many of the rating actions in an NRSRO's disclosure would share the date of June 26, 2007, which would be the first action disclosed for rating histories of credit ratings initially determined before June 26, 2007. This would result from the proposed requirement to add all credit ratings outstanding as of June 26, 2007 to the disclosure. *See* proposed new paragraph (b)(1)(i) of Rule 17g–7. As discussed below, the

requirement is in the 100% Rule as it exists today.[282] The inclusion of the date of a rating action is designed to allow investors and other users of credit ratings to review the timing of a rating action.[283] This would allow the person reviewing the credit rating histories of the NRSROs to reach conclusions about which NRSROs did the best job in determining an initial rating and, thereafter, making appropriate and timely adjustments to the credit rating.[284]

Proposed new paragraph (b)(2)(iii) of Rule 17g–7 would identify the third category of data.[285] The information in this category would need to be disclosed if the rating action is taken with respect to an obligor (*i.e.,* as opposed to a credit rating of a security or money market instrument). In this case, the NRSRO would need to disclose (if applicable): (1) the CIK number of the rated obligor; and (2) the legal name of the obligor. This proposed requirement is in the 100% Rule as it exists today.[286]

Proposed new paragraph (b)(2)(iv) of Rule 17g–7 would identify the fourth category of data.[287] The information in this category would need to be disclosed when the rating action is taken with respect to a security or money market instrument. In this case, the NRSRO would need to disclose (if applicable): (1) The CIK number of the issuer of the security or money market instrument; (2) the legal name of the issuer of the security or money market instrument; and (3) the CUSIP of the security or money market instrument.[288] The proposed requirement to include the CUSIP of security or money market instrument is in the 100% Rule as it exists today.[289] The requirements to include the name and CIK number of the issuer would be new. The Commission preliminarily believes including this information would be useful because it would allow users of the XBRL data file to sort credit ratings of securities and money market instruments by issuer.

Proposed paragraph (b)(2)(v) of Rule 17g–7 would identify the fifth category of data: namely, a classification of the type of rating action.[290] The NRSRO would be required to select 1 of 7 classifications to identify the reason for the rating action.[291] Aside from the first classification discussed below, the Commission preliminarily believes that the classifications identify all types of actions an NRSRO might take with respect to a credit rating.

The first classification would be that the rating action constitutes a disclosure of a credit rating that was outstanding as of June 26, 2007 for the purposes of proposed paragraph (b)(1)(i) of Rule 17g–7.[292] As discussed above, the Commission is proposing that the 100% rule capture all credit ratings outstanding as of June 26, 2007 by disclosing the credit rating and associated information as of that date.[293] If adopted, this would mean that thousands, if not hundreds of thousands, of ratings histories each beginning on June 26, 2007 would be disclosed. The proposed classification is designed to alert users of the disclosures that the proposed rule caused the June 26, 2007 entry in the rating history of the obligor, security, or money market instrument and not because, for example, a credit rating was initially determined for the obligor, security, or money market instrument on that date.

The second classification would be that the rating action was an initial credit rating.[294] For example, an NRSRO would select this classification if the rating action was the first credit rating determined by the NRSRO with respect to the obligor, security, or money market instrument. The third classification would be an upgrade to an existing credit rating.[295] The fourth classification would be a downgrade to an existing credit rating, which would include assigning a credit rating of default.[296] The fifth classification would be placing an existing credit rating on credit watch or review.[297] This means the NRSRO has disclosed that it is actively evaluating whether the credit rating should be changed. The sixth classification would be affirming the current credit rating assigned to the obligor, security, or money market instrument.[298] For example, an NRSRO may publish an announcement that it is affirming the current credit rating of an obligor, security, or money market instrument and, consequently, determine not to upgrade or downgrade the credit rating to a different notch in the rating scale.

The seventh classification would be the withdrawal of an existing credit rating.[299] In the case of a withdrawal, the NRSRO would be required to provide a sub-classification identifying reason for the withdrawal.[300] There would be three sub-classifications: (1) The obligor defaulted, or the security or money, market instrument went into default; [301] (2) the obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; [302] or (3) the credit rating was withdrawn for reasons other than those set forth in (1) and (2) above.[303]

Commission is proposing that this action (the adding of an outstanding credit rating) have a unique XBRL tag so that persons using these disclosures do not confuse the action as an initial credit rating or change to an existing credit rating (*e.g.,* an upgrade or a down grade). *See* proposed new paragraph (b)(2)(v)(A) of Rule 17g–7.

[282] *See* 17 CFR 240.17g–2(a)(8).

[283] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63838 (Dec. 4, 2009).

[284] *Id.*

[285] *See* proposed new paragraph (b)(2)(iii) of Rule 17g–7.

[286] *See* 17 CFR 240.17g–2(a)(8).

[287] *See* proposed new paragraph (b)(2)(iv) of Rule 17g–7.

[288] CUSIP stands for the Committee on Uniform Securities and Identification. A CUSIP number consists of nine characters that uniquely identify a company or issuer and the type of security.

[289] *See* 17 CFR 240.17g–2(a)(8).

[290] *See* proposed paragraph (b)(2)(v) of Rule 17g–7.

[291] The actual disclosure would need to be the type of rating action and not the credit rating resulting from the rating action. For example, if the rating action was a downgrade, the NRSRO would need to classify it as a "downgrade" and not, for example, a change of the current credit rating from the AA notch to AA- notch. This would allow users of the disclosures to sort the information by, for example, initial credit ratings, upgrades, and downgrades.

[292] *See* proposed paragraph (b)(2)(v)(A) of Rule 17g–7.

[293] *See* proposed paragraph (b)(1)(i) of Rule 17g–7.

[294] *See* proposed paragraph (b)(2)(v)(B) of Rule 17g–7. The Commission is not proposing that a rating action that results in an "expected" or "preliminary" credit rating be included in the rating history for a given obligor, security, or money market instrument. As noted above, expected or preliminary ratings most commonly are issued by an NRSRO with respect to a structured finance product at the time the issuer commences the offering and typically are included in pre-sale reports. These ratings may include a range of ratings, or any other indications of a credit rating used prior to the assignment of an initial credit rating for a new issuance. As such, the Commission preliminarily believes they should be excluded from the ratings histories since the issuance of the "initial" credit rating is the first formal expression of the NRSRO's view of the relative creditworthiness of the obligor, security, or money market instrument.

[295] *See* proposed paragraph (b)(2)(v)(C) of Rule 17g–7.

[296] *See* proposed paragraph (b)(2)(v)(D) of Rule 17g–7.

[297] *See* proposed paragraph (b)(2)(v)(E) of Rule 17g–7.

[298] *See* proposed paragraph (b)(2)(v)(F) of Rule 17g–7. Some NRSRO's also may "confirm" an existing credit rating. For the purposes of this proposed disclosure requirement, the Commission intends the term "affirmation of an existing credit rating" to include a "confirmation" of an existing credit rating.

[299] *See* proposed paragraph (b)(2)(v)(G) of Rule 17g–7.

[300] *See* proposed paragraphs (b)(2)(v)(G)(*1*), (*2*) and (*3*) of Rule 17g–7.

[301] *See* proposed paragraph (b)(2)(v)(G)(*1*) of Rule 17g–7.

[302] *See* proposed paragraphs (b)(2)(v)(G)(*2*) of Rule 17g–7.

[303] *See* proposed paragraphs (b)(2)(v)(G)(*3*) of Rule 17g–7.

These sub-classifications would parallel, in many respects, the outcomes identified in paragraphs (4)(B)(iii), (iv), and (v) of the proposed amendments to the instructions for Exhibit 1 to Form NRSRO discussed above in Section II.E.1.a of this release. However, the Commission preliminarily believes that it would not be appropriate to prescribe standard definitions of "default" and "paid-off" for the purposes of making these classifications.[304] The reason is the ratings history disclosure requirement is designed to allow investors and other users of credit ratings to compare how each NRSRO treats a commonly rated obligor, security, or money market instrument. In other words, unlike the production of performance statistics where standard definitions are necessary to promote comparability of aggregate statistics, the historical rating information should indicate on the granular level any differences between the NRSROs with respect to the rating actions they take for a commonly rated obligor, security or money, market instrument, including their differing definitions of default. This would allow investors and other users of credit ratings to review, for example, the timing of when one NRSRO downgraded an obligor to the default category as opposed to another NRSRO or group of NRSROs. Among other things, investors and other users of credit ratings could review the data to identify outliers that are either quick or slow to downgrade obligors, securities, or money market instruments to default. In addition, an NRSRO with a very narrow definition of "default" might continue to maintain a security at a notch in its rating scale above the default category; whereas other NRSROs, using broader definitions, had classified the security as having gone into default. Creating a mechanism to identify these types of variances is a goal of the enhancements to the 100% Rule. Moreover, users of the ratings history information could use the standard definition of *Default* in the proposed enhancements to the instructions for Exhibit 1 as a benchmark to compare when an NRSRO classified obligors, securities, or money markets as having gone into default.

The Commission preliminarily believes a default and the extinguishment of an obligation because it was paid in full are the most frequently occurring reasons why an NRSRO withdraws a credit rating. However, as discussed above, in Section II.E.1.a of this release, there are other reasons an NRSRO might withdraw a credit rating, including that the rated obligor or issuer of the rated security or money market instrument stopped paying for the surveillance of rating or the NRSRO decided not to devote resources to continue to perform surveillance on the rating of an obligor, security, or money market instrument on an unsolicited basis. However, as also discussed above, the withdrawal of credit ratings could be used to make performance statistics appear more favorable. Consequently, as with the Transition/Default Matrices in Exhibit 1, an NRSRO would be required to identify when a credit rating was withdrawn for reasons other than default or the extinguishment of the obligation upon which the credit rating is based. Similar to the Transition/Default Matrices, persons using the ratings history information could analyze how often an NRSRO withdraws a credit rating for "other" reasons in a class or subclass of credit ratings.

Proposed paragraph (b)(2)(vi) of Rule 17g–7 would identify the sixth category of data: Namely, a classification of the class or subclass of credit rating.[305] The classes of credit ratings would be based on the definition of "nationally recognized statistical rating organization" in Section 3(a)(62) of the Exchange Act.[306] Consequently, the first classification would be financial institutions, brokers or dealers.[307] The second classification would be insurance companies.[308] The third classification would be corporate issuers.[309]

The fourth classification would be issuers of structured finance products.[310] If the credit rating falls into this class, the proposed rule would require the NRSRO to identify a sub-classification as well.[311] The sub-classifications would be the same subclasses for structured finance credit ratings the Commission is proposing an applicant and NRSRO use for the purposes of the Transition/Default Matrices to be disclosed in Exhibit 1 to Form NRSRO:[312] RMBS;[313] CMBS;[314] CLOs;[315] CDOs;[316] ABCP;[317] other asset-backed securities;[318] and other structured finance products.[319]

The fifth classification would be issuers of government securities, municipal securities or securities issued by a foreign government.[320] If the credit rating falls into this class, the proposed rule would require the NRSRO to

[304] For the reasons discussed herein, the Commission also preliminarily believes that the NRSRO should use its definition of "default" in taking a rating action that results in a downgrade to the default category, which would need to be classified as a downgrade in the information disclosed with the rating action pursuant to proposed paragraph (b)(2)(v)(D) of Rule 17g–7.

[305] *See* proposed paragraph (b)(2)(vi) of Rule 17g–7.

[306] *See* 15 U.S.C. 78o–7(a)(62). Because some obligors, securities, and money market instruments have characteristics that could cause them to be assigned more than one class of credit rating, the Commission is seeking comment below in Section II.M.4.a of this release on which class would be the most appropriate for certain types of obligors, securities, and money market instruments. Based on the comments received in response to those requests, the Commission may decide to prescribe by rule or identify through guidance how certain types of obligors, securities, and money market instruments should be classified for the purposes proposed in new paragraph (b)(vi) of Rule 17g–7.

[307] *See* 15 U.S.C. 78o–7(a)(62)(B)(i) and proposed paragraph (b)(2)(vi)(A) of Rule 17g–7.

[308] *See* 15 U.S.C. 78o–7(a)(62)(B)(ii) and proposed paragraph (b)(2)(vi)(B) of Rule 17g–7.

[309] *See* 15 U.S.C. 78o–7(a)(62)(B)(iii) and proposed paragraph (b)(2)(vi)(C) of Rule 17g–7.

[310] *See* 15 U.S.C. 78o–7(a)(62)(B)(iv) and proposed paragraph (b)(2)(vi)(D) of Rule 17g–7. Consistent with the existing Instructions to Exhibit 1 to Form NRSRO (and the proposed amendments to those instructions) this class of credit rating would be broader than the class identified in Section 15E(a)(62)(B)(iv) of the Exchange Act.

[311] *See* proposed paragraphs (b)(2)(vi)(D)(*1*)–(*7*) of Rule 17g–7.

[312] *See* discussion in Section II.E.1.a of this release and proposed new paragraphs (1)(D)(i)–(vii) of the instructions for Exhibit 1.

[313] *See* proposed paragraph (b)(2)(vi)(D)(*1*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends that "RMBS" for the purposes of this rule means a securitization primarily of residential mortgages.

[314] *See* proposed paragraph (b)(2)(vi)(D)(*2*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends that "CMBS" for the purposes of this rule means a securitization primarily of commercial mortgages.

[315] *See* proposed paragraph (b)(2)(vi)(D)(*3*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends "CLO" for the purposes of this rule means a securitization primarily of commercial loans.

[316] *See* proposed paragraph (b)(2)(vi)(D)(*4*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminary intends "CDO" for the purposes of this rule to mean a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds.

[317] *See* proposed paragraph (b)(2)(vi)(D)(*5*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends "ABCP" for the purposes of this rule to mean short term notes issued by a structure that securitizes a variety of financial assets (*e.g.,* trade receivables or credit card receivables), which secure the notes.

[318] *See* proposed paragraph (b)(2)(vi)(D)(*6*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends that "other asset backed security" for the purposes of this rule to mean a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans or equipment leases.

[319] *See* proposed paragraph (b)(2)(vi)(D)(*7*) of Rule 17g–7. As with the proposal for Exhibit 1 to Form NRSRO, the Commission preliminarily intends that "other structured finance product" for the purposes of this rule to mean a structured finance product not identified in the other sub-classifications of structured finance products.

[320] *See* 15 U.S.C. 78o–7(a)(62)(B)(v) and proposed paragraph (b)(2)(vi)(E) of Rule 17g–7.

identify a sub-classification as well.[321] The sub-classifications would be the same for this class as are currently identified in the Instructions for Exhibit 1 to Form NRSRO: (1) Sovereign issuers;[322] (2) United States public finance;[323] or (3) International public finance.[324]

Proposed paragraph (b)(2)(vii) of Rule 17g–7 would identify the seventh category of data: Namely, the credit rating symbol, number, or score in the applicable rating scale of the NRSRO assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the action, the credit rating symbol, number, or score in the applicable rating scale of the NRSRO assigned to the obligor, security, or money market instrument as of the date of the rating action.[325] The rating symbol, number, or score is a key component of the information that would need to be disclosed as it reflects the NRSRO's view of the relative creditworthiness of the obligor, security, or money market instrument subject to the rating as of the date the action is taken. The proposal would specify that the NRSRO, in either case, would need to include a credit rating in a default category, if applicable. Otherwise an NRSRO might exclude a default on the theory that it is not a credit rating *per se* (*i.e.,* an opinion of creditworthiness) but rather a statement of fact.

Proposed paragraph (b)(3) of Rule 17g–7 would provide that the information identified in paragraph (b)(2) of the rule (discussed above) must be disclosed in an interactive data file that uses an XBRL format and the List of XBRL Tags for NRSROs as published on the Internet Web site of the Commission.[326] This would be consistent with the current requirement of the 100% Rule.[327] As discussed above, however, the data fields that would need to have an XBRL tag would be expanded.[328]

Proposed paragraph (b)(4) of Rule 17g–7 would specify when a rating action would need to be disclosed by establishing two distinct grace periods: 12 months and 24 months.[329] In particular, a rating action would need to be disclosed: (1) Within 12 months from the date the action is taken, if the credit rating subject to the action is issuer-paid; [330] (2) or within 24 months from the date the action is taken, if the credit rating subject to the action is not issuer-paid.[331] These separate grace periods for issuer-paid and non-issuer-paid credit ratings are consistent with the current requirement of the 100% Rule.[332]

Finally, paragraph (b)(5) of Rule 17g–7 would provide that an NRSRO may cease disclosing a rating history of an obligor, security, or money market instrument no earlier than 20 years after the date a rating action with respect to the obligor, security, or money market instrument is classified as a withdrawal of the credit rating pursuant to paragraph (b)(2)(v)(G) of Rule 17g–7, provided no subsequent credit ratings are assigned to the obligor, security, or money market instrument after the withdrawal classification.[333] This proposed requirement is designed to ensure that information about credit ratings that are withdrawn for any reason would remain a part of the disclosure for a significant period of time. The Commission preliminarily believes this would address concerns that an NRSRO might withdraw a credit rating to remove its history from the disclosure requirement to, for example, make the performance of its credit ratings appear better than, in fact, is the case.

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (b) of Rule 17g–7. The Commission also seeks comment on the following:

1. Should the 10% Rule be retained? For example, could it be enhanced to meet the requirement of Section 15E(q)(A) of the Exchange Act that disclosures be comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs? If so, how could the 10% Rule be modified to better meet this requirement? Moreover, even with such modifications, would an enhanced 10% Rule provide information to investors and other users of credit ratings that would be useful to assess the performance of credit ratings across NRSROs?

2. Should the proposed rule require that the disclosure of the ratings history information under the proposed enhancements to the 100% Rule be made freely available in writing, when requested? If so, how should an NRSRO meet such a request? For example, would an NRSRO be required to mail a written copy of information in the XBRL data file to a party requesting the information? If so, would it be appropriate to permit the NRSRO to charge reasonable handling and postage fees? Would such a requirement to provide a written copy of the information in the XBRL data file be feasible? Are there other ways an NRSRO could make this disclosure freely available in writing?

3. If the rule required an NRSRO to provide a written copy of the information in the XBRL data file, when requested, under what circumstances would a party request this information in writing, given that it would be freely available on an easily accessible portion of the NRSRO's corporate Internet Web site? Moreover, why would a party request the information in written form when downloading an electronic file in an XBRL format would make accessing and analyzing the information much easier?

4. Should the rule require that an NRSRO publish quarterly, bi-annual, or annual copies of the rating histories and that these be made available when requested to implement the "in writing" provision in the statute?

5. What practical issues should the Commission consider in implementing the proposed enhancements to the 100% Rule? For example, would the variances in the procedures and methodologies NRSROs use to determine credit ratings raise practical issues in terms of classifying and disclosing the proposed required information about a credit rating action? In addition, would the variances in the meanings and definitions that NRSROs ascribe to the categories of credit ratings in their rating scales raise practical issues in terms of classifying and disclosing the proposed required information about a credit rating action? How could the proposal be modified to address any practical issues identified without undermining the goal of making the data more useful in terms of the

[321] *See* proposed paragraphs (b)(2)(vi)(E)(*1*)–(*3*) of Rule 17g–7.

[322] *See* Instructions for Exhibit 1 to Form NRSRO and proposed paragraph (b)(2)(vi)(E)(*1*) of Rule 17g–7.

[323] *See* Instructions for Exhibit 1 to Form NRSRO and proposed paragraph (b)(2)(vi)(E)(*2*) of Rule 17g–7.

[324] *See* Instructions for Exhibit 1 to Form NRSRO and proposed paragraph (b)(2)(vi)(E)(*3*) of Rule 17g–7.

[325] *See* proposed new paragraph (b)(2)(vii) of Rule 17g–7.

[326] *See* proposed new paragraph (b)(3) of Rule 17g–7.

[327] *See* 17 CFR 240.17g–2(d)(3)(ii).

[328] *See* proposed new paragraph (b)(2)(i)–(vii).

[329] *See* proposed new paragraph (b)(4) of Rule 17g–7.

[330] *See* proposed paragraph (b)(4)(i) of Rule 17g–7.

[331] *See* proposed paragraph (b)(4)(ii) of Rule 17g–7.

[332] *See* 17 CFR 240.17g–2(d)(3)(i)(B) and (C). *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63842 (Dec. 4, 2009) (discussing the 100% Rule and the reasons why the Commission adopted distinct 12 and 24 month grace periods).

[333] *See* proposed paragraph (b)(5) of Rule 17g–7.

amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?

6. How long would it take an NRSRO to implement the proposed requirements and begin making the proposed disclosures? What steps would an NRSRO need to take to implement the proposed requirements?

7. What practical issues should the Commission consider with respect to the proposed requirement to add histories for all credit ratings outstanding as of June 26, 2007 to the disclosure? How could the proposal be modified to address any practical issues identified without undermining the rule's goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?

8. What practical issues should the Commission consider with respect to the proposed new requirement to disclose the name and CIK number of the issuer of a rated security or money market instrument? How could the proposal be modified to address any practical issues identified without undermining the goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?

9. What practical issues should the Commission consider with respect to the proposed new requirement to disclose the type of rating action? For example, are the proposed classifications a comprehensive list of the types of rating actions taken by NRSROs? If not, identify and describe any other types of rating actions. Would the disclosure of this data be useful to investors and other users of credit ratings? How could the proposal be modified to address any practical issues identified without undermining the goal of making the data more useful in terms of the amount of information provided, the ability to search and sort the information, and the ability to compare historical rating information across NRSROs?

10. With respect to the proposal to disclose the types of rating actions, are the three sub-classifications proposed for the withdrawal classification sufficient? For example, should the rule further refine the "withdrawal for other reasons" sub-classification to require disclosure of certain other reasons that a credit rating might be withdrawn such as the obligor or issuer ceased paying for the credit rating?

11. What practical issues should the Commission consider with respect to the proposed new requirement to disclose the class or subclass of the credit rating? For example, are the descriptions of the subclasses of credit ratings for structured finance products sufficiently clear to provide an NRSRO with guidance as to how such credit ratings should be classified? How could the descriptions be modified to make them clearer and provide better guidance?

12. Are the subclasses of credit ratings for structured finance products the most appropriate way to divide this class of credit ratings? For example, should the "other-ABS" subclass be separated into subclasses based on the assets underlying the ABS (*i.e.,* auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, equipment loans, or equipment leases)? In addition, are there other classes of structured finance products that should be identified?

13. Commenters are referred to the questions in Section II.M.4.a of this release with respect to Items 6 and 7 of Form NRSRO and how certain types of obligors, securities, and money market instruments should be classified for purposes of providing approximate amounts of credit ratings outstanding in each class of credit rating for which an applicant is seeking registration (Item 6) or an NRSRO is registered (Item 7)? In responding to those questions, commenters should consider how proposed classifications could be applied for the purposes of proposed new paragraph (b)(2)(vi) of Rule 17g–7.

14. Is 20 years the appropriate amount of time to require that the ratings history for a withdrawn credit rating remain part of the disclosure? Should the rule require these histories be retained for a lesser period of time, such as 10 or 15 years or a greater period of time, such as 25 or 30 years? If a different time period would be more appropriate, explain the rationale for such different time period.

15. Are the existing 12 and 24 month grace periods appropriate? Should the Commission consider adopting a single grace period, rather than the existing bifurcated approach?

F. Credit Rating Methodologies

Section 932(a)(8) of the Dodd-Frank Act amends Section 15E of the Exchange Act to add new subsection (r).[334] Section 15E(r) of the Exchange Act provides that the Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by NRSROs that require each NRSRO to ensure a number of objectives.[335] The Commission preliminarily believes it would be appropriate to implement Section 15E(r) by proposing rules requiring an NRSRO to establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure the objectives identified in that section of the statute.[336] This approach would allow an NRSRO to establish policies and procedures that can be integrated with its procedures and methodologies for determining credit ratings, which vary across NRSROs. At the same time, the proposed rule would set forth specific objectives that the policies and procedures would need to be reasonably designed to achieve both in design and operation. The Commission preliminarily believes this approach would be appropriate, particularly given that the objectives set forth in Section 15E(r) of the Exchange Act relate to the procedures and methodologies an NRSRO uses to determine credit ratings.[337]

For these reasons, the Commission is proposing to implement Section 15E(r) of the Exchange Act, in large part, through paragraph (a) of new Rule 17g–8.[338] The Commission also is proposing an amendment to Rule 17g–2 to apply the record retention and production requirements of that rule to the policies and procedures.[339]

1. Proposed Paragraph (a) of New Rule 17g–8

As noted above, proposed paragraph (a) of new Rule 17g–8 would require an NRSRO to have policies and procedures

[334] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(r).

[335] *See* 15 U.S.C. 78o–7(r)(1)–(3).

[336] *See id.*

[337] *See* Section 15E(r) of the Exchange Act (15 U.S.C. 78o–7(r)); *see also* Section 15E(c)(2) of the Exchange Act (providing, in pertinent part, that the Commission may not regulate the substance of credit ratings or the procedures and methodologies by which any NRSRO determines credit ratings). 15 U.S.C. 78o–7(c)(2).

[338] *See* proposed paragraph (a) of new Rule 17g–8. As discussed above in Section II.C of this release, the Commission is proposing to implement several provisions of the Dodd-Frank Act through rules that would prescribe policies and procedures an NRSRO would need to establish, maintain, enforce, and document. The Commission is proposing that all such rule requirements be consolidated in new Rule 17g–8. *See* proposed paragraphs (a), (b), and (c) of new Rule 17g–8 and Section II.C.1 of this release discussing proposed paragraph (c) and Section II.J.1 discussing proposed paragraph (b).

[339] *See* proposed new paragraph (b)(13) of Rule 17g–2.

that are reasonably designed to achieve objectives identified in Section 15E(r) of the Exchange Act.[340] In particular, the prefatory text would require an NRSRO to establish, maintain, enforce, and document policies and procedures that are reasonably designed to ensure the objectives identified in paragraphs (a)(1), (2), (3), (4), and (5).

Proposed paragraph (a)(1) of new Rule 17g–8 would implement Section 15E(r)(1)(A) of the Exchange Act.[341] This section provides that the Commission's rules shall require an NRSRO to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board.[342] The Commission preliminarily believes that the mandate set forth in the statute is explicit and, consequently, proposes rule text that would mirror the statutory text.[343] Therefore, proposed paragraph (a)(1) of new Rule 17g–8 would require an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or another body performing a function similar to that of a board of directors.[344] In this regard, the Commission notes that Section 15E(t)(3)(A) of the Exchange Act contains a self-executing provision that the board of the NRSRO shall oversee the "establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings."[345] Consequently, the Commission preliminarily believes that the policies and procedures proposed to be required pursuant to paragraph (a)(1) of Rule 17g–8 would need to be designed to assist the NRSRO's board in carrying out this responsibility. In addition, Section 15E(t)(5) of the Exchange Act provides that the Commission may permit an NRSRO to delegate responsibilities required in Section 15E(t) to a committee if the Commission finds that compliance with the provisions of that section present an unreasonable burden on a small NRSRO.[346] Consequently, the Commission preliminarily believes that the policies and procedures proposed to be required pursuant to paragraph (a)(1) of Rule 1717g–8 would need to be designed to assist the NRSRO's committee in carrying out the responsibility to oversee the "establishment, maintenance, and enforcement of the policies and procedures for determining credit ratings mandated by Section 15E(t)(3)(A) of the Exchange Act" if the committee (rather than the board) carries out this responsibility.[347]

Proposed paragraph (a)(2) of new Rule 17g–8 would implement Section 15E(r)(1)(B) of the Exchange Act.[348] This section provides that the Commission's rules shall require an NRSRO to ensure that credit ratings are determined using procedures and methodologies, including qualitative and quantitative data and models, that are in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies.[349] The Commission preliminarily believes that the mandate set forth in the statute is explicit and, consequently, proposes rule text that would mirror the statutory text.[350] Therefore, proposed paragraph (a)(2) of new Rule 17g–8 would require an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO.[351]

Proposed paragraph (a)(3)(i) of new Rule 17g–8 would implement Section 15E(r)(2)(A) of the Exchange Act.[352] This section provides that the Commission's rules shall require an NRSRO to ensure that when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), the changes are applied consistently to all credit ratings to which the changed procedures and methodologies apply.[353] The Commission preliminarily believes that the mandate set forth in the statute is explicit and, consequently, proposes rule text that would mirror the statutory text.[354] Therefore, proposed paragraph (a)(3)(i) of new Rule 17g–8 would require an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply.[355]

Proposed paragraph (a)(3)(ii) of new Rule 17g–8 would implement Section 15E(r)(2)(B) of the Exchange Act.[356] This section provides that the Commission's rules shall require an NRSRO to ensure that when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), to the extent that changes are made to credit rating surveillance procedures and methodologies, the changes are applied to then-current credit ratings by the NRSRO within a reasonable time period determined by the Commission, by rule.[357] The Commission proposes that paragraph (a)(3)(ii) of new Rule 17g–8 require the NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[358] This proposed rule would mirror the text of Section 15E(r)(2)(B) of the Exchange Act but add additional language to implement the rulemaking provision that the changes are applied to then-current credit ratings by the NRSRO within a "reasonable time

[340] *See* prefatory text of proposed paragraph (a) of new Rule 17g–8.

[341] *See* proposed paragraph (a)(1) of new Rule 1717g–8 and 15 U.S.C. 78o–7(r)(1)(A).

[342] *See* 15 U.S.C. 78o–7(r)(1)(A).

[343] *See* proposed paragraph (a)(1) of new Rule 17g–8.

[344] *Compare* proposed paragraph (a)(1) of new Rule 17g–8, *with* 15 U.S.C. 78og–7(r)(1)(A).

[345] *See* 15 U.S.C. 78og–7(t)(3)(A).

[346] *See* 15 U.S.C. 78og–7(t)(5).

[347] *See* 15 U.S.C. 78og–7(t)(3)(A).

[348] *See* proposed paragraph (a)(2) of new Rule 17g–8 and 15 U.S.C. 78og–7(r)(1)(B).

[349] *See* 15 U.S.C. 78o–7(r)(1)(B).

[350] *See* proposed paragraph (a)(2) of new Rule 17g–8.

[351] *Compare* proposed paragraph (a)(2) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(1)(B).

[352] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8 and 15 U.S.C. 78o–7(r)(2)(A).

[353] *See* 15 U.S.C. 78o–7(r)(2)(A).

[354] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8.

[355] *Compare* proposed paragraph (a)(3)(i) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(2)(A).

[356] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8 and 15 U.S.C. 78o–7(r)(2)(B).

[357] 15 U.S.C. 78o–7(r)(2)(B).

[358] *See* proposed paragraph (a)(3)(ii) of new Rule 17g–8.

period determined by the Commission, by rule."[359]

In determining what time period would be reasonable, the Commission preliminarily believes that the NRSRO should be required to have policies and procedures designed to ensure that the changes are applied to existing credit ratings within a reasonable time period taking into consideration certain relevant factors; namely, the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated. The Commission preliminarily believes that a prescribed time frame (*e.g.,* 1, 2, 3, 4 or more months) would not be appropriate because the reasonableness of the timeframe in which existing credit ratings are modified would depend on the facts and circumstances. If the rule mandated a time-frame that is too short, under the circumstances, the NRSRO would need to rush to meet the deadline. This could negatively impact the quality of the credit ratings determined using the changed surveillance procedures and methodologies. Moreover, prescribing a timeframe that is too long could create an inadvertent "safe harbor" allowing the NRSRO to act more slowly to apply the changed surveillance procedures and methodologies to the impacted obligors, securities, and money market instruments. Consequently, the Commission preliminarily believes that the best approach is to require the NRSRO to apply the changed surveillance procedures and methodologies to the impacted obligors, securities, and money market instruments within a reasonable amount of time given the circumstances.

Proposed paragraph (a)(4)(i) of new Rule 17g–8 would implement Sections 15E(r)(2)(C), 15E(r)(3)(B), and 15E(r)(3)(D) of the Exchange Act as they all relate to disclosing information about material changes to procedures and methodologies (including changes to qualitative and quantitative data and models) an NRSRO uses to determine credit ratings.[360] Specifically, Section 15E(r)(2)(C) provides that the Commission's rules shall require an NRSRO to ensure that when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), the NRSRO publicly discloses the reason for the change.[361] Section 15E(r)(3)(B) provides that the Commission's rules shall require an NRSRO to notify users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input.[362] Finally, Section 15E(r)(3)(D) provides that that the Commission's rules shall require an NRSRO to notify users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input, of the likelihood the change will result in a change in current credit ratings.[363]

Consequently, Section 15E(r)(3)(B) requires the NRSRO to notify users of a change, Section 15E(r)(2)(C) requires the NRSRO to publish the reason for a change, and Section 15E(r)(3)(D) requires the NRSRO to disclose the potential impact of the change on existing credit ratings.[364] The Commission preliminarily believes that the mandates set forth in these sections are explicit and, consequently, proposes rule text that would mirror the statutory text.[365] Moreover, because the objective of the provision is to provide disclosure to investors and users of credit ratings, the Commission preliminarily believes proposed paragraph (a)(4)(i) of Rule 17g–8 should specify that these disclosures be published on an easily accessible portion of the NRSRO's corporate Internet Web site.[366] This would be consistent with the Commission's proposed Internet disclosure requirements for Form NRSRO under paragraph (i) of Rule 17g–1 and the ratings history information under proposed new paragraph (b)(1) of Rule 17g–1. For these reasons, proposed paragraph (a)(4)(i) of new Rule 17g–8 would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings.[367]

Proposed paragraph (a)(4)(ii) of new Rule 17g–8 would implement Sections 15E(r)(3)(C) of the Exchange Act.[368] This section provides that the Commission's rules shall require an NRSRO to notify users of credit ratings when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions.[369] The Commission preliminarily believes that the mandate set forth in the statute is explicit and, consequently, proposes rule text that would mirror the statutory text.[370] Moreover, as with the proposed paragraph (a)(4)(i) disclosures, the Commission preliminarily believes proposed paragraph (a)(4)(ii) of Rule 17g–8 should specify that these disclosures be published on the NRSRO's corporate Internet Web site. Therefore, proposed paragraph (a)(4)(ii) of new Rule 17g–8 would require the NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings.[371]

Proposed paragraph (a)(5) of new Rule 17g–8 would implement Section15E(r)(3)(A) of the Exchange Act.[372] This section provides that the Commission's rules shall require an NRSRO to notify users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[373] The Commission preliminarily believes that the mandate set forth in the statute is explicit and, consequently, proposes rule text that would mirror the statutory text.[374] Therefore, proposed

[359] *Compare* proposed paragraph (a)(3)(ii) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(2)(B).

[360] *See* proposed paragraph (a)(4)(i) of new Rule 17g–8, 15 U.S.C. 78o–7(r)(2)(B), 15 U.S.C. 78o–7(r)(3)(B), and 15 U.S.C. 78o–7(r)(3)(D).

[361] *See* 15 U.S.C. 78o–7(r)(2)(C).

[362] *See* 15 U.S.C. 78o–7(r)(3)(B).

[363] *See* 15 U.S.C. 78o–7(r)(3)(D).

[364] 15 U.S.C. 78o–7(r)(3)(B), 15 U.S.C. 78o–7(r)(2)(C), and 15 U.S. C. 78o–7(r)(3)(D).

[365] *Compare* proposed paragraph (a)(4)(ii) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(3)(B), 15 U.S.C. 78o–7(r)(2)(C), and 15 U.S. C. 78o–7(r)(3)(D).

[366] As discussed above in Section II.E.1.b of this release, the Commission preliminarily believes there is no alternative means of disclosure that makes information as "readily accessible" as an Internet Web site. In addition, as discussed in that section of this release, the Commission preliminarily believes that information would be disclosed on an "easily accessible" portion of a corporate Internet Web site if it could be accessed through a clearly and prominently labeled hyperlink on the homepage of the NRSRO's corporate Internet Web site.

[367] *See* proposed paragraph (a)(4)(i) of new Rule 17g–8.

[368] *See* proposed paragraph (a)(4)(ii) of new Rule 17g–8 and 15 U.S.C. 78o–7(r)(3)(C).

[369] *See* 15 U.S.C. 78o–7(r)(3)(C).

[370] *Compare* proposed paragraph (a)(4)(ii) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(3)(C).

[371] *See* proposed paragraph (a)(4)(ii) of new Rule 17g–8.

[372] *See* proposed paragraph (a)(5) of new Rule 17g–8 and 15 U.S. C. 78o–7(r)(3)(A).

[373] 15 U.S.C. 78o–7(r)(3)(A).

[374] *Compare* proposed paragraph (a)(5) of new Rule 17g–8, *with* 15 U.S.C. 78o–7(r)(3)(A).

paragraph (a)(5) of new Rule 17g–8 would require the NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[375]

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (a) of new Rule 17g–8. The Commission also seeks comment on the following:

1. Are there alternatives to implementing Section 15E(r) of the Exchange Act (*i.e.,* other than requiring policies and procedures reasonably designed to achieve the objectives identified in the statute) that the Commission should consider? If so, please identify those alternatives and explain how they would better achieve the goals of Section 15E(r)?

2. Would proposed paragraph (a)(1) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to achieve the objective that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or another body performing a function similar to that of a board of directors appropriately meet the mandate identified in Section 15E(r)(1)(A) of the Exchange Act? If not, how could the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?

3. Would proposed paragraph (a)(2) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO appropriately meet the mandate identified in Section 15E(r)(1)(B) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures? In addition, how would this proposed requirement relate to the requirement in Section 15E(c)(3)(A) of the Exchange Act requiring an NRSRO to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings. For example, would procedures established under proposed paragraph (a)(2) of Rule 17g–8 be part of the internal control structure or would they be designed to achieve different goals?

4. Would proposed paragraph (a)(3)(i) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply appropriately meet the mandate identified in Section 15E(r)(2)(A) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?

5. Would proposed paragraph (a)(3)(ii) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated appropriately meet the mandate identified in Section 15E(r)(2)(B) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?

6. With respect to proposed paragraph (a)(3)(ii) of new Rule 17g–8, should the Commission consider prescribing specific time frames such as 1, 2, 3, 4, 5, 6 or more months to apply the new procedures and methodologies to existing credit ratings? Should the time frame depend on the methodology used to determine credit ratings (*i.e.,* quantitative as opposed to qualitative)? As another alternative, should the Commission prescribe a timeframe based on the number of outstanding credit ratings? For example, should the Commission consider requiring that the new procedures and methodologies be applied to existing credit ratings in tranches such as 10 credit ratings per week or 60 credit ratings per month or some other ratio of the period of time to the number of credit ratings? Should such a ratio depend on the methodology used to determine credit ratings (*i.e.,* quantitative as opposed to qualitative)?

7. Would proposed paragraph (a)(4)(i) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings appropriately meet the mandates identified in Sections 15E(r)(3)(B), 15E(r)(2)(C) and 15E(r)(3)(D) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?

8. Would proposed paragraph (a)(4)(ii) of new Rule 17g–8 requiring an NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings appropriately meet the mandates identified in Section 15E(r)(3)(C) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures? For example, should the Commission define "significant error"? If so, how should the term be defined? Should the definition establish a materiality threshold? If so, how should such a threshold be prescribed? Similarly, should the Commission interpret the term "may result in a change in current credit ratings" to, for example, clarify the level of likelihood necessary to trigger the reporting requirement? For example, should there be a reasonable likelihood that the error may result in a change in current credit ratings?

9. Would proposed paragraph (a)(5) of new Rule 17g–8 requiring an NRSRO to

[375] *See* proposed paragraph (a)(5) of new Rule 17g–8. In addition, because this would be a rating-by-rating disclosure, the Commission is proposing, as discussed in Section II.G.3 of this release, that disclosure of the version of a credit rating procedure or methodology be part of the rule implementing Section 15E(s) of the Exchange Act, which specifies, among other things, that the Commission adopt rules requiring an NRSRO to generate a form to be included with the publication of a credit rating. *See* 15 U.S.C. 78o–7(s) and proposed new paragraph (a)(1)(ii)(B) of Rule 17g–7.

have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating appropriately meet the mandates identified in Sections 15E(r)(3)(A) of the Exchange Act? If not, how should the proposal be modified to provide more guidance to NRSROs about how to design their policies and procedures?

2. Proposed Amendment to Rule 17g–2

For the reasons discussed in Section II.A.2 of this release, the Commission preliminarily believes that the policies and procedures that would be required pursuant to proposed paragraph (a) of new Rule 17g–8 should be subject to the record retention and production requirements of Rule 17g–2.[376] Consequently, the Commission proposes adding new paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g–8 as a record that must be retained.[377]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (a)(9) of Rule 17g–2.

G. Form and Certifications To Accompany Credit Ratings

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new paragraph (s).[378] Sections 15E(s)(1) through (4), among other things, set forth provisions specifying Commission rulemaking with respect to disclosures an NRSRO must make with the publication of a credit rating.[379] The Commission proposes to implement these provisions by adding new paragraph (a) to Rule 17g–7.[380] As discussed in detail below, the prefatory text of proposed new paragraph (a) would require an NRSRO to publish two items when taking a rating action: (1) A form containing information about the credit rating resulting from or subject to the rating action; [381] and (2) any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[382] Proposed paragraph (a)(1) of Rule 17g–7 would contain three primary components: paragraph (a)(1)(i) prescribing the format of the form; [383] paragraph (a)(1)(ii) prescribing the content of the form; [384] and paragraph (a)(1)(iii) prescribing an attestation requirement for the form.[385] Proposed paragraph (a)(2) of Rule 17g–7 would identify the certification from a provider of third-party due diligence services as an item to be published with the rating action.[386]

1. Paragraph (a)—Prefatory Text

Section 15E(s)(1) of the Exchange Act provides that the Commission shall require, by rule, an NRSRO to prescribe a form to accompany the publication of each credit rating that discloses: (1) Information relating to the assumptions underlying the credit rating procedures and methodologies; the data that was relied on to determine the credit rating; and if applicable, how the NRSRO used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating; and (2) information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO.[387] In addition, Section 15E(s)(2)(C) provides that the form shall be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.[388] Finally, Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO at the time it produces a credit rating, to disclose any certifications from providers of third-party due diligence services to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by the third-party.[389] The Commission proposes to implement Sections 15E(s)(1), 15E(s)(2)(C), and 15E(s)(4)(D) of the Exchange Act, in large part, through the prefatory text of proposed paragraph (a) of Rule 17g–7.[390]

The first sentence of the proposed prefatory text would provide that an NRSRO must publish the items described in paragraphs (a)(1) and (a)(2) of the proposed rule, as applicable, when taking a rating action with respect to credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the NRSRO is registered.[391] Proposed paragraph (a)(1) would identify the form and proposed paragraph (a)(2) would identify the certification from a provider of third-party due diligence services.[392] The Commission preliminarily intends that the requirement to publish the form and, when applicable, the certification would be triggered each time an NRSRO takes a rating action with respect to an obligor, security, or money market instrument.[393] Consequently, the second sentence of the prefatory text of paragraph (a) would define the term "rating action" to mean any of the following: the publication of an expected or preliminary credit rating assigned to an obligor, security, or

[376] 17 CFR 240.17g–2.

[377] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[378] *See* 15 U.S.C. 78o–7(s).

[379] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(s)(1)–(4). Section 15E(s)(4) of the Exchange Act also establishes requirements for issuers and underwriters of asset-backed securities, NRSROs, and providers of third-party due diligence services with respect to third-party due diligence services relating to asset-backed securities. *See* 15 U.S.C. 78o–7(s)(4)(A)–(D). The Commission's proposals to implement additional provisions in Section 15E(s)(4) are discussed below in Section II.H of this release.

[380] *See* proposed new paragraph (a) of Rule 17g–7.

[381] *See* proposed new paragraph (a)(1) of Rule 17g–7. As discussed below, this paragraph would implement, in large part, rulemaking specified in Sections 15E(s)(1), (2), and (3) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(1), (2), and (3).

[382] *See* proposed new paragraph (a)(2) of Rule 17g–7. As discussed below, this paragraph would implement, in part, rulemaking specified in Section 15E(s)(4) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(4).

[383] *See* proposed new paragraph (a)(1)(i) of Rule 17g–7. As discussed below, this paragraph would implement, in large part, rulemaking specified in Section 15E(s)(2) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(2).

[384] See proposed new paragraph (a)(1)(ii) of Rule 17g–7. As discussed below, this paragraph would implement, in large part, rulemaking specified in Section 15E(s)(3) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(3).

[385] *See* proposed new paragraph (a)(1)(iii) of Rule 17g–7. As discussed below, this paragraph would implement, in large part, rulemaking specified in Section 15E(q)(2)(F) of the Exchange Act. *See* 15 U.S.C. 78o–7(q)(2)(F).

[386] *See* proposed paragraph (a)(2) of Rule 17g–7.

[387] *See* 15 U.S.C. 78o–7(s)(1)(A) and (B).

[388] *See* 15 U.S.C. 78o–7(s)(2)(C).

[389] *See* 15 U.S.C. 78o–7(s)(4)(D).

[390] *See* proposed new paragraph (a) of Rule 17g–7. As discussed below, the Commission proposes to implement Section 15E(s)(1)(A)(iii) of the Exchange Act—which relates to the use of servicer or remittance reports—in proposed paragraph (a)(1)(i)(G) of Rule 17g–7 because it specifies a particular item of information that would need to be disclosed in the form. *See* 15 U.S.C. 78o–7(a)(1)(i)(G).

[391] *See* proposed new paragraph (a) of Rule 17g–7.

[392] *See* proposed new paragraphs (a)(1) and (a)(2) of Rule 17g–7.

[393] In other words, the form and any certifications would need to be included when the NRSRO publishes an initial credit rating, publishes an upgrade of an existing credit rating, publishes a downgrade of an existing credit rating (including to a default category), publishes a credit rating as being on credit watch or review, publishes an affirmation of an existing credit rating, or withdraws a credit rating.

money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); a placement of an existing credit rating on credit watch or review; an affirmation of an existing credit rating; and a withdrawal of an existing credit rating. The inclusion of expected or preliminary credit ratings in the list of "rating actions" would incorporate the requirements in the note to current Rule 17g–7.[394] As the Commission explained when adopting Rule 17g–7, the definition of "credit rating" in the note is designed to address pre-sale reports, which are typically issued by an NRSRO with respect to an asset-backed security at the time the issuer commences the offering and typically include an expected or preliminary rating and a summary of the important features of a transaction.[395] Consequently, disclosure at the time of issuance of a pre-sale report is particularly important to investors, since such reports provide them with important information prior to the point at which they make an investment decision.[396] The Commission preliminarily believes that the importance of providing investors with timely information to enable them to make informed investment decisions applies equally to the broader range of disclosures mandated by Section 15E(s) of the Exchange Act.[397] Accordingly, the Commission is proposing that the requirement to publish the form and any certifications be triggered upon the issuance of an expected or preliminary credit rating.[398] Furthermore, as the Commission stated when adopting Rule 17g–7, the term "preliminary credit rating" includes any credit rating, any range of ratings, or any other indications of a credit rating published prior to the assignment of an initial credit rating for a new issuance.[399]

The third sentence of the proposed prefatory text would provide that the items described in the form and any applicable certifications must be published in the same medium and made available to the same persons who can receive or access the credit rating that is the result of the rating action or the subject of rating action.[400] In other words, if the NRSRO publishes its credit ratings via a press release disseminated through its corporate Internet Web site and/or through other electronic information providers, the form and any applicable certifications would need to be disseminated through the same venues. The Commission preliminarily believes one way to accomplish this disclosure would be to publish the credit rating and information in the press release on the form along with the required contents of the form (discussed below) and, if applicable, to attach any relevant certifications to the form.[401] In addition, the form and any certifications would need to be disseminated to the same persons who can receive or access the credit rating that is the result of the rating action or the subject of the rating action. Consequently, if the NRSRO publishes credit ratings for free on its corporate Internet Web site, it would need to make the form and any certifications similarly available. Alternatively, if the NRSRO operates under the subscriber-pay business model, it would need to disseminate the form and any certifications to the subscribers only.

Request for Comment

The Commission generally requests comment on all aspects of proposed prefatory text to paragraph (a) of Rule 17g–7. The Commission also seeks comment on the following:

1. What practical issues should the Commission consider in implementing the proposal that an NRSRO publish the form and the certifications every time the NRSRO takes a rating action? For example, should the certifications only be required to be included with the publication of an expected, preliminary, or initial credit rating or do they remain relevant for the term of the rated security or money market instrument and, therefore, should they continue to be published with subsequent rating actions? How could the proposal be modified to address any practical issues identified without undermining the goal of making this information available to users of the NRSRO's credit ratings?

2. What practical issues should the Commission consider in implementing the proposal that an NRSRO publish the form and the certifications in the same medium and make it available to the same persons who can receive or access the credit rating resulting from or subject to the rating action? How could the proposal be modified to address any practical issues identified without undermining the goal of making this information available to users of the NRSRO's credit ratings?

3. What practical issues should the Commission consider in implementing the proposal to apply provisions of the current note to Rule 17g–7—that the term "rating action" includes the publication of any expected or preliminary credit rating by the NRSRO—to all of the information required under Rule 17g–7 as it would be amended under these proposals? How could the proposal be modified to address any such practical issues without undermining the goal of the disclosure requirements currently contained in Rule 17g–7, that is, to make available to investors, if a credit rating is issued with respect to an asset-backed security, a description of: (1) The representations, warranties, and enforcement mechanisms available to investors; and (2) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities?

4. The Commission has proposed to require issuers of asset-backed securities using a registration statement on proposed Form SF–3 to file a preliminary prospectus, under proposed Rule 424(h), containing transaction-specific information at least 5 business days in advance of the first sale of securities in the offering in order to allow investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction.[402] Should the Commission

[394] *See* Note to 17 CFR 240.17g–7, which provides that for the purposes of the rule's current requirements, a "credit rating" includes any expected or preliminary credit rating issued by an NRSRO.

[395] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4503–4505 (Jan. 26, 2011).

[396] *Id.*

[397] 15 U.S.C. 78o–7(s).

[398] *See* proposed new paragraph (a) of Rule 17g–7.

[399] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4503–4505 (Jan. 26, 2011).

[400] *See* proposed new paragraph (a) of Rule 17g–7. A credit rating would be the "result" of a rating action in the case where the rating action is either the publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; or an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default). A credit rating would be the "subject" of a rating action in the case where the rating action is either a placement of an existing credit rating on credit watch or review; an affirmation of an existing credit rating; or a withdrawal of an existing credit rating.

[401] As discussed below, the Commission is proposing that the required contents of the form include the credit rating. Consequently, if adopted, an NRSRO would be required to include the credit rating on the form regardless of whether the NRSRO also publishes the credit rating on a separate record. If the NRSRO publishes the credit rating on a separate record, the NRSRO would be required to publish the form (which would also contain the credit rating) with the separate record under proposed new paragraph (a) of Rule 17g–7.

[402] *See Asset Backed Securities,* Securities Act Release No. 9117 (Apr. 7, 2010), 75 FR 23328 (May 3, 2010).

explicitly require that the disclosures required by Rule 17g–7 be provided no later than the time of the proposed Rule 424(h) preliminary prospectus?

5. If the NRSRO publishes its credit ratings via a press release disseminated through its corporate Internet Web site and/or through other electronic information providers, would it be appropriate to permit the NRSRO to accomplish the required disclosure by publishing the credit rating and information in the press release on the form along with the required contents of the form (as discussed below) and, if applicable, attaching any relevant certifications to the form? What other methods could be used to make the required disclosures?

2. Paragraph (a)(1)(i)—Format of the Form

Proposed new paragraph (a)(1) of Rule 17g–7 would identify a form generated by the NRSRO that meets the requirements of proposed new paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of Rule 17g–7 as the first item that must be included with a credit rating.[403] In this regard, Section 15E(s)(2) of the Exchange Act provides that the form developed by the NRSRO shall: (1) Be easy to use and helpful for users of credit ratings to understand the information contained in the report;[404] (2) require the NRSRO to provide the required quantitative content specified in Section 15E(s)(3)(B) in a manner that is directly comparable across types of securities;[405] and (3) be made readily available to users of credit ratings, in electronic or paper form, as the Commission may, by rule, determine.[406] The Commission preliminarily believes that the provisions identified in items (1) and (2) above are high-level objectives that an NRSRO should be required to achieve in developing the presentation of the form. As discussed next, Section 15E(s)(3) of the Exchange Act identifies very specific items of information that the Commission's rule shall require an NRSRO to include in the form.[407] Given the specificity in Section 15E(s)(3), the Commission preliminarily believes it would be appropriate to use the higher level objectives specified in Section 15E(s)(2) to prescribe presentation requirements for the form.[408] Consequently, the Commission is proposing rule text that would mirror the statutory text.[409] In particular, proposed new paragraph (a)(1)(i)(A) of Rule 17g–7 would provide that the form generated by the NRSRO would need to be easy to use and helpful for users of credit ratings to understand the information contained in the form.[410] For example, the Commission preliminarily believes that a form that presents the required information in complex mathematical equations would not achieve this objective.

Similarly, proposed new paragraph (a)(1)(i)(B) of Rule 17g–7 would mirror the statutory text by requiring that the content described in proposed new paragraphs (a)(1)(ii)(K), (L) and (M) of Rule 17g–7 be disclosed in a manner that is directly comparable across types of obligors, securities, and money market instruments.[411] As discussed below, Section 15E(s)(3) of the Exchange Act identifies qualitative and quantitative information that must be included in the form.[412] Section 15E(s)(2)(B) provides that the quantitative content identified in Section 15E(s)(3)(B) be directly comparable across types of securities.[413] The Commission is proposing that the quantitative content specified in Section 15E(s)(3)(B) of the Exchange Act be disclosed in the form pursuant to new paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7.[414] Consequently, as proposed, new paragraph (a)(1)(i)(B) of Rule 17g–7 would implement Section 15E(s)(2)(B) by requiring an NRSRO to present this quantitative information in a manner that is directly comparable across types of obligors, securities, and money market instruments.

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(ii) of proposed Rule 17g–7. The Commission also seeks comment on the following:

1. Is the objective that the form be easy to use and helpful for users of credit ratings to understand the information contained in the report sufficiently clear to provide NRSROs with guidance on how to present the information in the form in accordance with this proposed requirement? If not, how should the proposal be modified to provide better guidance? Commenters should provide specific suggested rule text and explain the rationale for it.

2. Is the objective that the content described in proposed paragraphs (a)(1)(ii)(K), (L) and (M) of Rule 17g–7 be disclosed in a manner that is directly comparable across types of obligors, securities, and money market instruments sufficiently clear to provide NRSROs with guidance on how to present this information in the form in accordance with this proposed requirement? If not, how should the proposal be modified to provide better guidance? Commenters should provide specific suggested rule text and explain the rationale for it. In addition, how would adding "obligors" and "money market instruments" to the presentation requirement expand its scope? Finally, the Commission requests commenters to provide examples of disclosures in these areas that are being made now (if such disclosures are being made) and how the disclosures might be presented under the proposed requirements.

3. Should the Commission require that the information an NRSRO must include in the form be presented in a certain order to enhance comparability? For example, should the Commission require that the information be disclosed in the order in which it is identified in proposed paragraph (a)(1)(ii) of Rule 17g–7 discussed below? Are there other means of enhancing the comparability of forms among NRSROs? For example, should the Commission require a more standardized format for the form?

3. Paragraph (a)(1)(ii)—Content of the Form

Section 15E(s)(3) of the Exchange Act provides that the Commission shall require, by rule, that the form accompanying the publication of a credit rating contain specifically

[403] *See* proposed new paragraph (a)(1) of Rule 17g–7.

[404] *See* 15 U.S.C. 78o–7(s)(2)(A).

[405] *See* 15 U.S.C. 78o–7(s)(2)(B).

[406] *See* 15 U.S.C. 78o–7(s)(2)(C). As discussed above, the Commission proposes to implement Section 15E(s)(2)(C) of the Exchange Act through the prefatory text in proposed new paragraph (a) of Rule 17g–7.

[407] *See* 15 U.S.C. 78o–7(s)(3)(A) and (B).

[408] *See* 15 U.S.C. 78o–7(s)(2) and 15 U.S.C. 78o–7(s)(3).

[409] *See* proposed new paragraphs (a)(1)(i)(A) and (B) of Rule 17g–7.

[410] *Compare* new paragraph (a)(1)(i)(A) of Rule 17g–7, *with* 15 U.S.C. 78o–7(s)(2)(A).

[411] *Compare* new paragraph (a)(1)(i)(B) of Rule 17g–7, *with* 15 U.S.C. 78o–7(s)(2)(B). *See also* 15 U.S.C. 78o–7(s)(2)(B) and 15 U.S.C. 78o–7(s)(3)(B). While the statutory text only refers to "securities," Section 3(a)(60) of the Exchange Act defines the term "credit rating" to mean an "assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments." *See* 15 U.S.C. 78c(a)(60). The Commission believes it would be appropriate to expand this presentation requirement for the form to include credit ratings of "obligors" and "money market instruments" to ensure that it applies to all types of credit ratings and to be consistent with the Commission's existing and proposed rules for NRSROs, which commonly apply to credit ratings of "obligors, securities, and money market instruments." *See, e.g.,* 17 CFR 240.17g–2 and 17 CFR 240.17g–3.

[412] *See* 15 U.S.C. 78o–7(s)(3).

[413] *See* 15 U.S.C. 78o–7(s)(3)(A) and (B).

[414] *See* proposed new paragraphs (a)(1)(ii)(K), (L), and (M) of Rule 17g–7 and 15 U.S.C. 78o–7(s)(3)(B)).

identified items of information.[415] In particular, Section 15E(s)(3)(A) identifies items of "qualitative content" and Section 15E(s)(3)(B) identifies items of "quantitative content."[416] The Commission preliminarily believes that the items of information identified in Sections 15E(s)(3)(A) and (B) are explicit and, consequently, proposes rule text that would mirror the statutory text.[417] In addition, the Commission also is proposing that certain additional information be included in the form.

Prefatory Text of Paragraph (a)(1)(ii). The prefatory text of proposed new paragraph (a)(1)(ii) of Rule 17g–7 would provide that the form generated by the NRSRO must contain information about the credit rating identified in paragraphs (a)(1)(ii)(A) through (N).[418]

Paragraph (a)(1)(ii)(A). The first item of information would be identified in proposed new paragraph (a)(1)(ii)(A) of Rule 17g–7.[419] This paragraph would implement, in part, Section 15E(s)(3)(A)(i) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form the credit ratings produced by the NRSRO.[420] Specifically, paragraph (a)(1)(ii)(A) of Rule 17g–7 would require the NRSRO to include the symbol, number, or score in the rating scale used by the NRSRO to denote the credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the rating action and the identity of the obligor, security, or money market instrument.[421] In other words, the form would need to identify the symbol, number, or score representing the notch in the applicable rating scale assigned to the obligor, security, or money market instrument, which, as proposed in the prefatory text to paragraph (a) of Rule 17g–7, would include a preliminary credit rating, an initial credit rating, an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default), a placement of an existing credit rating on watch or review, an affirmation of an existing credit rating, or withdrawal of an existing credit rating.[422]

In addition, under proposed new paragraph (a)(1)(ii)(A) of Rule 17g–7, the form would need to contain the identity of the obligor, security, or money market instrument that is the subject of the rating action. The Commission preliminarily believes that the identity of the obligor would be the person's legal name and any other name the obligor uses in its business. Furthermore, the Commission preliminarily believes that the identity of the security or money market instrument would be the name of the security or money market instrument, if applicable, and a description of the security or money market instrument. For example, a bond could be identified as "senior unsecured debt issued by Company XYZ maturing in 2015." Providing the CUSIP for the security or money market instrument also could be a way to further identify it. The Commission preliminarily believes that the disclosure on the form of the identity of the obligor, security, or money market instrument must be sufficient to notify (and not confuse) users of the form as to the identity of rated obligor, security, or money market instrument. As discussed above, the Commission is proposing in new paragraph (a)(1)(i)(A) of Rule 17g–7 that the NRSRO must generate a form that is easy to use and helpful for users of credit ratings to understand the information contained in the form.[423] The Commission preliminarily believes a form that does not clearly identify the obligor, security, or money market instrument subject to the rating action would not meet this requirement.

Paragraph (a)(1)(ii)(B). The second item of information would be identified in proposed new paragraph (a)(1)(ii)(B) of Rule 17g–7.[424] This paragraph would implement, in part, Section 15E(r)(3)(A) of the Exchange Act.[425] As discussed above in Section II.F.1 of this release, Section 15E(r)(3)(A) provides that the rules adopted by the Commission must ensure an NRSRO notifies users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[426] The Commission is proposing to implement Section 15E(r)(3)(A), in part, through paragraph (a)(5) of new Rule 17g–8.[427] Proposed paragraph (a)(5) of new Rule 17g–8 would require an NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.

The Commission proposes to further implement Section 15E(r)(3)(A) of the Exchange Act through proposed paragraph (a)(1)(ii)(B) of Rule 17g–7. Specifically, paragraph (a)(1)(ii)(B) would require the NRSRO to disclose on the form the version of the procedure or methodology used to determine the credit rating.[428] The Commission preliminarily believes that this disclosure could be made by identifying the name of the procedure or methodology (including any number used to denote the version), the date the procedure was implemented, and an Internet URL where further information about the procedure or methodology can be obtained.[429] The Commission preliminarily believes that proposed paragraph (a)(1)(ii)(B) of Rule 17g–7 would complement and work in conjunction with proposed paragraph (a)(5) of new Rule 17g–8.[430] Rule 17g–7 would require the disclosure and Rule 17g–8 would require the NRSRO to have policies and procedures that are reasonably designed to ensure the disclosure is made.[431]

The Commission also notes that Section 15E(s)(1)(B) of the Exchange Act provides that the Commission shall require, by rule, each NRSRO to prescribe a form to accompany the publication of a credit rating that discloses information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO.[432] The Commission preliminarily believes that disclosing the version of the procedure or methodology used to determine the credit rating would promote this goal. For example, credit rating methodologies that are predominantly quantitative rely on models to produce credit ratings. These models periodically are updated and released as newer or different versions of the

[415] *See* 15 U.S.C. 78o–7(s)(3).

[416] *See* 15 U.S.C. 78o–7(s)(3)(A) and (B).

[417] *Compare* proposed new paragraph (a)(1)(ii) of Rule 17g–7, *with* 15 U.S.C. 78o–7(s)(3).

[418] *See* proposed new paragraph (a)(1)(ii) of Rule 17g–7.

[419] *See* proposed new paragraph (a)(1)(ii)(A) of Rule 17g–7.

[420] *See* 15 U.S.C. 78o–7(s)(3)(A)(i).

[421] *Id.*

[422] *See* proposed new paragraph (a) of Rule 17g–7.

[423] *See* proposed new paragraph (a)(1)(i)(A) of Rule 17g–7.

[424] *See* proposed new paragraph (a)(1)(ii)(B) of Rule 17g–7.

[425] *See* 15 U.S.C. 78o–7(r)(3)(A).

[426] *Id.*

[427] *See* proposed paragraph (a)(5) of new Rule 17g–8.

[428] *See* proposed paragraph (a)(1)(ii)(B) of Rule 17g–7.

[429] For example, a disclosure could resemble: "RMBS Rating Methodology 3.0, implemented February 12, 2011. For further information go to [insert website address]."

[430] *See* 15 U.S.C. 78o–7(r)(3)(A), proposed new paragraph (a)(1)(ii)(B) of Rule 17g–7, and proposed paragraph (a)(5) of Rule 17g–8.

[431] *See* proposed new paragraph (a)(1)(ii)(B) of Rule 17g–7 and proposed paragraph (a)(5) of Rule 17g–8.

[432] *See* 15 U.S.C. 78o–7(s)(1)(B).

previous model. The Commission preliminarily believes disclosing the version of a model used to produce a credit rating would help investors and other users of credit ratings better understand the credit rating and how the determination of the credit rating may differ from similar products rated using an earlier version of the model.

Paragraph (a)(1)(ii)(C). The third item of information would be identified in proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7.[433] This paragraph would implement Section 15E(s)(3)(A)(ii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form the main assumptions and principles used in constructing procedures and methodologies, including qualitative methodologies and quantitative inputs and assumptions about the correlation of defaults across underlying assets used in rating structured products.[434] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7 would mirror the statutory text.[435] In particular, proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7 would require the NRSRO to disclose in the form the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets.[436]

Paragraph (a)(1)(ii)(D). The fourth item of information would be identified in proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7.[437] This paragraph would implement Section 15E(s)(3)(A)(iii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form the potential limitations of the credit ratings and the types of risks excluded from the credit ratings that the NRSRO does not comment on, including liquidity, market, and other risks.[438] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7 would mirror the statutory text.[439] In particular, proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7 would require the NRSRO to disclose in the form the potential limitations of the credit rating, including the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks.[440]

Paragraph (a)(1)(ii)(E). The fifth item of information would be identified in proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7.[441] This paragraph would implement Section 15E(s)(3)(A)(iv) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form information on the uncertainty of the credit rating, including: (1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including any limits on the scope of historical data; and any limits in accessibility to certain documents or other types of information that would have better informed the credit rating.[442] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7 would mirror the statutory text.[443] In particular, proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7 would require the NRSRO to disclose in the form information on the uncertainty of the credit rating, including: (1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including: any limits on the scope of historical data; and any limits in accessibility to certain documents or other types of information that would have better informed the credit rating.[444]

Paragraph (a)(1)(ii)(F). The sixth item of information would be identified in proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7.[445] This paragraph would implement Section 15E(s)(3)(A)(v) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form whether and to what extent third-party due diligence services have been used by the NRSRO, a description of the information that such third-party reviewed in conducting due diligence services, and a description of the findings and conclusions of such third-party.[446] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7 would mirror the statutory text.[447] In particular, proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7 would require the NRSRO to disclose in the form whether and to what extent third-party due diligence services were used by the NRSRO, a description of the information that such third-party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third-party.[448]

The Commission notes that Section 15E(s)(4)(A) of the Exchange Act contains a requirement that the issuer or underwriter of any asset-backed security shall make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[449] In addition, Section 15E(s)(4)(B) of the Exchange Act contains a self-executing requirement providing that in any case in which third-party due diligence services are employed by an NRSRO, an issuer, or an underwriter, the person providing the due diligence services shall provide to any NRSRO that produces a rating to which such services relate, written certification in a format prescribed, by rule, by the Commission.[450] Finally, as discussed above in Section II.G.1 of this release and below in Section II.G.5, the NRSRO would be required to disclose with the publication of a credit rating any certifications it receives from a provider of third-party due diligence services pursuant to Section 15E(s)(4)(B)

[433] *See* proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7.

[434] *See* 15 U.S.C. 78o–7(s)(3)(A)(ii).

[435] Compare 15 U.S.C. 78o–7(s)(3)(A)(ii), *with* proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7.

[436] *See* proposed new paragraph (a)(1)(ii)(C) of Rule 17g–7.

[437] *See* proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7.

[438] *See* 15 U.S.C. 78o–7(s)(3)(A)(iii).

[439] Compare 15 U.S.C. 78o–7(s)(3)(A)(iii), *with* proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7.

[440] *See* proposed new paragraph (a)(1)(ii)(D) of Rule 17g–7.

[441] *See* proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7.

[442] *See* 15 U.S.C. 78o–7(s)(3)(A)(iv).

[443] Compare 15 U.S.C. 78o–7(s)(3)(A)(iv), *with* proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7.

[444] *See* proposed new paragraph (a)(1)(ii)(E) of Rule 17g–7.

[445] *See* proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7.

[446] *See* 15 U.S.C. 78o–7(s)(3)(A)(v).

[447] Compare 15 U.S.C. 78o–7(s)(3)(A)(v), *with* proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7.

[448] *See* proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7.

[449] *See* 15 U.S.C. 78o–7(s)(4)(A). The Commission's proposals for implementing this provision are discussed below in Section II.H.1 of this release.

[450] *See* 15 U.S.C. 78o–7(s)(4)(B). The Commission's proposals for implementing this provision are discussed below in Sections II.H.2 and II.H.3 of this release.

of the Exchange Act.[451] The Commission preliminarily believes that the disclosure that would be required pursuant to proposed paragraph (a)(1)(ii)(F) of Rule 17g–7 would need to describe how the NRSRO used the findings and conclusions of any third-party due diligence report made publicly available by an issuer or underwriter pursuant to Section 15E(s)(4)(A) of the Exchange Act.[452] Similarly, the Commission preliminarily believes that the disclosure would need to describe how the NRSRO used any certifications it receives from providers of third-party due diligence services pursuant to Section 15E(s)(4)(B) of the Exchange Act.[453]

Paragraph (a)(1)(ii)(G). The seventh item of information would be identified in proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7.[454] This paragraph would implement Section 15E(s)(1)(A)(iii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose, if applicable, how the NRSRO used servicer or remittance reports, and with what frequency, to conduct surveillance of the credit rating.[455] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7 would mirror the statutory text.[456] In particular, proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7 would require the NRSRO to disclose in the form, if applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating.[457]

Paragraph (a)(1)(ii)(H). The eighth item of information would be identified in proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7.[458] This paragraph would implement Section 15E(s)(3)(A)(vi) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form a description of the data about any obligor, issuer, security, or money market instrument that were relied upon for the purpose of determining the credit rating.[459] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7 would mirror the statutory text.[460] In particular, proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7 would require the NRSRO to disclose in the form a description of the data about any obligor, issuer, security, or money market instrument that was relied upon for the purpose of determining the credit rating.[461]

Paragraph (a)(1)(ii)(I). The ninth item of information would be identified in proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7.[462] This paragraph would implement Section 15E(s)(3)(A)(vii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form a statement containing an overall assessment of the quality of information available and considered in producing a rating for the obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, and money market instruments.[463] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently, proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7 would mirror the statutory text.[464] In particular, proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7 would require the NRSRO to disclose in the form a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments.[465]

Paragraph (a)(1)(ii)(J). The tenth item of information would be identified in proposed new paragraph (a)(1)(ii)(J) of Rule 17g–7.[466] This paragraph would implement, in part, Section 15E(s)(3)(A)(viii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form information relating to conflicts of interest of the NRSRO.[467] The Commission preliminarily believes that the statutory text of Section 15E(s)(3)(A)(viii) is relatively general in that it does not specify the type of information about conflicts of interest that should be disclosed.[468] Accordingly, the Commission is proposing to identify three specific items of information that, at a minimum, would need to be disclosed about conflicts of interest.[469]

The first type of disclosure would be identified in proposed new paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7, which would require the NRSRO to classify the credit rating as either "solicited" or "unsolicited."[470] Proposed new paragraphs (a)(1)(ii)(*J*)(*1*)(*i*), (*ii*) and (*iii*) of Rule 17g–7 would define "solicited" and "unsolicited" credit ratings.[471] In this regard, the Commission is proposing two different sub-categories for solicited ratings: "solicited sell-side" and "solicited buy-side."[472] Proposed new paragraph (a)(1)(ii)(*J*)(*1*)(*i*) of Rule 17g–7 would define "Solicited sell-side" to mean the credit rating was paid for by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated.[473] In other words, the "solicited sell-side" classification would be used for issuer-paid credit ratings. Proposed new paragraph (a)(1)(ii)(*J*)(*1*)(*ii*) of Rule 17g–7 would define "Solicited buy-side" to mean the credit rating was paid for by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated. For example, a potential investor in a security may pay

[451] *See* proposed prefatory text of paragraph (a) and proposed paragraph (a)(2) of Rule 17g–7.

[452] *See* 15 U.S.C. 78o–7(s)(4)(A).

[453] *See* 15 U.S.C. 78o–7(s)(4)(B).

[454] *See* proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7.

[455] *See* 15 U.S.C. 78o–7(s)(1)(A)(iii).

[456] Compare 15 U.S.C. 78o–7(s)(1)(A)(iii), *with* proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7.

[457] *See* proposed new paragraph (a)(1)(ii)(G) of Rule 17g–7.

[458] *See* proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7.

[459] *See* 15 U.S.C. 78o–7(s)(3)(A)(vi).

[460] *Compare* 15 U.S.C. 78o–7(s)(3)(A)(vi), *with* proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7.

[461] *See* proposed new paragraph (a)(1)(ii)(H) of Rule 17g–7.

[462] *See* proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7.

[463] *See* 15 U.S.C. 78o–7(s)(3)(A)(vii). The Commission notes that the end of the statutory text refers to ratings of "similar issuances." *Id.* However, the preceding text refers to rating an "obligor, security, or money market instrument." *Id.* As discussed earlier, a credit rating of an "obligor" commonly means the rating of the obligor as an entity rather than a rating of securities or money market instruments issued by the obligor. Consequently, the rating of an obligor may not relate to an "issuance" of a particular security or money market instrument. Therefore, the Commission proposes in new paragraph (a)(1)(ii)(I) of Rule 17g–7 to use the term "similar obligors, securities, or money market instruments" instead of the term "similar issuances" in the statutory text.

[464] *Compare* 15 U.S.C. 78o–7(s)(3)(A)(vii), *with* proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7.

[465] *See* proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7.

[466] *See* proposed new paragraph (a)(1)(ii)(I) of Rule 17g–7.

[467] *See* 15 U.S.C. 78o–7(s)(3)(A)(viii).

[468] *Id.*

[469] *See* proposed new paragraph (a)(1)(ii)(J) of Rule 17g–7.

[470] *See* proposed new paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7.

[471] *See* proposed new paragraphs (a)(1)(ii)(*J*)(*1*)(*i*), (*ii*) and (*iii*) of Rule 17g–7.

[472] *See* proposed new paragraph (a)(1)(ii)(J)(*1*)(*i*) and (*ii*) of Rule 17g–7.

[473] *See* proposed new paragraph (a)(1)(ii)(*J*)(*1*)(*i*) of Rule 17g–7.

an NRSRO to determine a credit rating for the security. The Commission preliminarily believes this distinction is relevant because, depending on the type of entity paying for the rating, the potential conflict may exert different types of undue influence on the NRSRO. For example, a sell-side purchaser of the credit rating presumably would want the highest rating possible. However, a buy-side purchaser could want a lower credit rating if the purchaser is maintaining a short position or desiring a higher interest rate.

Proposed new paragraph (a)(1)(ii)(*J*)(*1*)(*iii*) of Rule 17g–7 would define an "unsolicited" credit rating to mean a credit rating the NRSRO was not paid to determine.[474] The Commission preliminarily intends this definition to include credit ratings funded by selling subscriptions to access the credit ratings (so-called "subscriber-paid credit ratings"). However, if a subscriber paid the NRSRO to determine a credit rating for a specific obligor, security, or money market instrument, the credit rating would need to be classified as either "solicited sell-side" if the subscriber also was the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated, or "solicited buy-side" if the subscriber was not the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated. This would apply, for example, if the subscriber was an investor or potential investor in the security or money market instrument and hired the NRSRO to specifically rate the security or money market instrument. In such a case, the credit rating would need to be classified as "solicited buy-side."

The second type of conflict disclosure would be identified in proposed new paragraph (a)(1)(ii)(*J*)(*2*) of Rule 17g–7.[475] This paragraph would provide that if the credit rating is classified as either "solicited sell-side" or "solicited buy-side" the NRSRO would be required to disclose whether the NRSRO provided services other than determining credit ratings to the person that paid for the rating during the most recently ended fiscal year.[476] In other words, the NRSRO would be required to indicate whether the person who purchased the credit rating was a client with respect to other services provided by the NRSRO. The Commission preliminarily believes clients paying an NRSRO for services in addition to determining credit ratings may pose an increased risk of exerting undue influence on the NRSRO with respect to its determination of credit ratings.[477] The Commission has adopted rules that address consulting and advisory services under authority in Section 15E(h)(2)(B).[478] The Commission preliminarily believes that the proposed disclosure requirement about other services would complement these requirements.

The third type of conflict disclosure would be identified in proposed new paragraph (a)(1)(ii)(*J*)(*3)* of Rule 17g–7.[479] This paragraph would require disclosure of information about a conflict of interest influencing a credit rating action discovered as a result of a look-back review conducted pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of new Rule 17g–8.[480]

Paragraph (a)(1)(ii)(K). The eleventh item of information would be identified in proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7.[481] This paragraph would implement Section 15E(s)(3)(B)(i) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that might lead to a change in the credit ratings; and (2) the magnitude of the change that a user can expect under different market conditions.[482] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7 would mirror the statutory text.[483] In particular, proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7 would require the NRSRO to disclose in the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that might lead to a change in the credit rating; and (2) the magnitude of the change that could occur under different market conditions.[484]

Paragraph (a)(1)(ii)(L). The twelfth item of information would be identified in proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.[485] This paragraph would implement Section 15E(s)(3)(B)(ii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form information on the content of the credit rating, including: (1) The historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.[486] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7 would mirror the statutory text.[487] In particular, proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7 would require the NRSRO to disclose in the form information on the content of the rating, including: (1) If applicable, the historical performance of the rating; and (2) the expected probability of default and the expected loss in the event of default.[488]

Paragraph (a)(1)(ii)(M). The thirteenth item of information would be identified in proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7.[489] This paragraph would implement Section 15E(s)(3)(B)(iii) of the Exchange Act, which provides that the Commission's rule shall require the NRSRO to disclose in the form information on the sensitivity of the credit rating to assumptions made by the NRSRO, including: (1) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the 5 assumptions identified impacts a credit rating.[490] The Commission preliminarily believes that the statutory text is explicit with respect to the information to be disclosed and, consequently proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7 would mirror

[474] *See* proposed new paragraph (a)(1)(ii)(*J*)(*1*)(*iii*) of Rule 17g–7.

[475] *See* proposed new paragraph (a)(1)(ii)(*J*)(*2*) of Rule 17g–7.

[476] *Id.*

[477] In this regard, the Commission notes that Section 939H of the Dodd-Frank Act contains a sense of the Congress that the Commission should exercise rulemaking authority under Section 15E(h)(2)(B) of the Exchange Act to prevent improper conflicts of interest arising from employees of NRSROs providing services to issuers of securities that are unrelated to the issuance of credit ratings, including consulting, advisory, and other services. *See* Public Law 111–203 § 939H.

[478] *See* 17 CFR 240.17g–5(a) and (b)(3), (4) and (5) and 17 CFR 240.17g–5(c).

[479] *See* proposed new paragraph (a)(1)(ii)(*J*)(*3*) of Rule 17g–7.

[480] This information is discussed in detail above in Section II.C.1 of this release.

[481] *See* proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7.

[482] *See* 15 U.S.C. 78o–7(s)(3)(B)(i).

[483] *Compare* 15 U.S.C. 78o–7(s)(3)(B)(i), *with* proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7.

[484] *See* proposed new paragraph (a)(1)(ii)(K) of Rule 17g–7.

[485] *See* proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.

[486] *See* 15 U.S.C. 78o–7(s)(3)(B)(ii).

[487] *Compare* 15 U.S.C. 78o–7(s)(3)(B)(ii), *with* proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.

[488] *See* proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.

[489] *See* proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7.

[490] *See* 15 U.S.C. 78o–7(s)(3)(B)(iii).

the statutory text.[491] In particular, proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7 would require the NRSRO to disclose in the form information on the sensitivity of the rating to assumptions made by the NRSRO, including: (1) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the 5 assumptions identified in the form impacts a rating.[492]

Paragraph (a)(1)(ii)(N). Finally, the fourteenth item of information would be identified in proposed new paragraph (a)(1)(ii)(N) of Rule 17g–7.[493] This paragraph would contain the current disclosure requirement in Rule 17g–7.[494] In particular, the current requirements in paragraphs (a) and (b) of Rule 17g–7 would be contained in proposed new paragraph (a)(1)(ii)(N).[495] Specifically, this paragraph would provide that if the credit rating is issued with respect to an asset-backed security, as that term is defined in Section 3(a)(77) of the Exchange Act, the NRSRO must include in the form a description of: (1) The representations, warranties, and enforcement mechanisms available to investors; and (2) how they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(ii) of proposed Rule 17g–7. The Commission also seeks comment on the following:

1. With respect to proposed paragraph (a)(1)(ii)(A), should the Commission consider requiring the disclosure of information in addition to the identity of the obligor's legal name and any other name that the obligor uses in its business? Are there additional or alternative ways to identify the obligor? Also, provide examples of how this disclosure might appear on the form.

2. With respect to proposed paragraph (a)(1)(ii)(A), should the Commission consider requiring the disclosure of information in addition to the name of the security or money market instrument, if applicable, and a description of the security or money market instrument? Are there additional or alternative ways to identify the security or money market instrument? Would disclosing the CUSIP alone be sufficient to identify the security or money market instrument? If so, should the Commission consider requiring that the CUSIP be disclosed? Also, provide examples of how this disclosure might appear on the form.

3. With respect to proposed paragraph (a)(1)(ii)(B), would the disclosure of the version of the procedure or methodology used to determine the credit rating in conjunction with proposed paragraph (a)(5) of Rule 17g–8 achieve the goals of Section 15E(r)(3)(A) of the Exchange Act? If not, what alternative or additional requirements should the Commission consider? Also, provide examples of how this disclosure might appear on the form.

4. Proposed paragraph (a)(1)(ii)(C) of Rule 17g–7 would require an NRSRO to disclose in the form the main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be disclosed? How could this issue be addressed?

5. Proposed paragraph (a)(1)(ii)(D) of Rule 17g–7 would require the NRSRO to disclose in the form the potential limitations of the credit rating, including the types of risks excluded from the credit rating that the NRSRO does not comment on, including, as applicable, liquidity, market, and other risks. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

6. Proposed paragraph (a)(1)(ii)(E) of Rule 17g–7 require the NRSRO to disclose in the form information on the uncertainty of the credit rating, including: (1) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and (2) a statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including: Any limits on the scope of historical data; and any limits in accessibility to certain documents or other types of information that would have better informed the credit rating. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be disclosed? How could this issue be addressed?

7. Proposed paragraph (a)(1)(ii)(F) of Rule 17g–7 would require the NRSRO to disclose in the form whether and to what extent third-party due diligence services were used by NRSRO organization, a description of the information that such third-party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third-party? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

8. With respect to proposed paragraph (a)(1)(ii)(F) of Rule 17g–7, how should the findings and conclusions of any third-party due diligence report made publicly available by the issuer or underwriter pursuant to Section 15E(s)(4)(A) of the Exchange Act be incorporated into the disclosure if used by the NRSRO? Similarly, how should any certifications the NRSRO receives from providers of third-party due diligence services pursuant to Section 15E(s)(4)(B) of the Exchange Act be

[491] *Compare* 15 U.S.C. 78o–7(s)(3)(B)(iii), *with* proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7.

[492] *See* proposed new paragraph (a)(1)(ii)(M) of Rule 17g–7.

[493] *See* proposed new paragraph (a)(1)(ii)(N) of Rule 17g–7.

[494] *See* 17 CFR 240.17g–7. As discussed above Section II.G.1 of this release, the definition of "credit rating" in the third sentence of the prefatory text to proposed new paragraph (a) of Rule 17g–7 would contain the provisions in the current Note to 17 CFR 240.17g–7, which provides that for the purposes of the rule's current requirements, a "credit rating" includes any expected or preliminary credit rating issued by an NRSRO.

[495] *Compare* 17 CFR 240.17g–7(a) and (b), *with* proposed new paragraph (a)(1)(ii)(N) of Rule 17g–7.

incorporated into the disclosure if used by the NRSRO? Also, provide examples of how this disclosure might appear on the form.

9. Proposed paragraph (a)(1)(ii)(G) of Rule 17g–7 would require the NRSRO to disclose in the form, if applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

10. Proposed paragraph (a)(1)(ii)(H) of Rule 17g–7 would require the NRSRO to disclose in the form a description of the data about any obligor, issuer, security, or money market instrument that was relied upon for the purpose of determining the credit rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

11. Proposed paragraph (a)(1)(ii)(I) of Rule 17g–7 would require the NRSRO to disclose in the form a statement containing an overall assessment of the quality of information available and considered in producing a rating for an obligor, security, or money market instrument, in relation to the quality of information available to the NRSRO in rating similar obligors, securities, or money market instruments. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

12. With respect to proposed paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7, are the proposed definitions of "solicited sell-side", "solicited buy-side", and "unsolicited" credit ratings sufficiently clear? If not, how should the definitions be augmented or altered? Also, provide examples of how this disclosure might appear on the form.

13. With respect to proposed paragraph (a)(1)(ii)(J)(*1*) of Rule 17g–7, would distinguishing between "solicited sell-side" and "solicited buy-side" credit ratings provide useful disclosure of potentially different conflicts of interest? Alternatively, should the disclosure more simply require classification of whether the credit rating was "solicited" or "unsolicited"? Also, provide examples of how this disclosure might appear on the form.

14. With respect to proposed paragraph (a)(1)(ii)(J)(*2*) of Rule 17g–7, would the proposed disclosure of whether the NRSRO provided other services to the person that paid for the credit rating during the most recently ended fiscal year provide useful disclosure of potential conflicts of interest? Also, provide examples of how this disclosure might appear on the form.

15. With respect to proposed paragraph (a)(1)(ii)(J) of Rule 17g–7, is there other information about conflicts of interest that the Commission should consider requiring to be disclosed in the form? Commenters should provide specific examples of such information and explain how it would provide useful information. Also, provide examples of how this disclosure might appear on the form.

16. Proposed paragraph (a)(1)(ii)(K) of Rule 17g–7 would require the NRSRO to disclose in the form an explanation or measure of the potential volatility of the credit rating, including: (1) Any factors that might lead to a change in the credit rating; and (2) the magnitude of the change that could occur under different market conditions. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. Should the Commission provide guidance on the types of factors that should be disclosed to establish a materiality threshold? If so, describe the factors and the corresponding materiality threshold. Furthermore, should the Commission define the term "might lead to a change in the credit rating" to establish the level of probability necessary to trigger the disclosure? If so, how should the term be defined?

17. Proposed paragraph (a)(1)(ii)(L) of Rule 17g–7 would require the NRSRO to disclose in the form information on the content of the rating, including: (1) If applicable, the historical performance of the rating; and (2) the expected probability of default and the expected loss in the event of default. Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form.

18. With respect to proposed paragraph (a)(1)(ii)(M) of Rule 17g–7 would require the NRSRO to disclose in the form information on the sensitivity of the rating to assumptions made by the NRSRO, including: (1) 5 assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and (2) an analysis, using specific examples, of how each of the 5 assumptions identified in the form impacts a rating? Is this proposed requirement sufficiently explicit with respect to the information that would need to be disclosed? If not, what additional detail should the Commission provide in terms of the information that would need to be disclosed? Also, provide examples of how this disclosure might appear on the form. In addition, would the proposal require the disclosure of proprietary information? If so, what type or types of proprietary information would be affected? How could this issue be addressed?

19. Is the proposal to codify the current requirements in paragraphs (a) and (b) of Rule 17g–7 in proposed paragraph (a)(1)(ii)(N) of Rule 17g–7 appropriate? For example, would this re-designation change those requirements in some manner?

4. Paragraph (a)(1)(iii)—Attestation Requirement

Section 15E(q)(2)(F) of the Exchange Act provides that the Commission's rules must require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument.[496] While Section 15E(q) relates to disclosure of information about the performance of credit ratings, the Commission preliminarily believes this attestation provision would more appropriately be implemented with respect to disclosures that must be made when a specific rating action is published. Consequently, the Commission proposes that it be part of the form that would be required to accompany a credit rating pursuant to

[496] *See* 15 U.S.C. 78o–7(q)(2)(F).

rulemaking under Section 15E(s) of the Exchange Act as opposed to a part of the proposed disclosures of Transition/Default Matrices in Exhibit 1 to Form NRSRO or credit rating histories that would implement Section 15E(q).[497]

Consequently, the Commission proposes to implement this attestation requirement as part of the rule requirement for an NRSRO to generate a form to accompany the publication of a credit rating.[498] In particular, under the proposal, the NRSRO would be required to attach to the form a signed statement by a person within the NRSRO stating that the person has responsibility for the credit rating and, to the best knowledge of the person: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and (3) the credit rating was an independent evaluation of the risks and merits of the obligor, security, or money market instrument.[499] Thus, the proposed requirement would mirror the statutory text in terms of the representations that would need to be made in the attestation.[500]

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (a)(1)(iii) of proposed Rule 17g–7. The Commission also seeks comment on the following:

1. Are there alternative means of implementing Section 15E(q)(2)(F) with respect to the attestation requirement? For example, should Section 15E(q)(2)(F) be implemented in proposed provisions requiring NRSROs to disclose information about the performance of credit ratings (*i.e.,* the proposed Form NRSRO Exhibit 1 Transition/Default Matrices and/or the proposed ratings histories disclosure requirement)? If so, how would the attestation requirement be made a part of either of these other proposals?

2. What person within the NRSRO has responsibility for the credit rating and the other information that would be required to be disclosed in the form and, consequently, could make the attestation? For example, could the lead analyst, the chair of the rating committee, a senior manager, or some other person make the proposed attestation?

5. Paragraph (a)(2)—Certification of Third-Party Due Diligence Provider

Section 15E(s)(4)(B) of the Exchange Act requires a third-party providing due diligence services to an NRSRO, issuer, or underwriter with respect to an Exchange Act-ABS[501] to provide a written certification to any NRSRO that produces a credit rating to which the due diligence services relate.[502] Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt a rule requiring an NRSRO that receives a certification from a provider of third-party due diligence services to disclose the certification to the public in a manner that allows the public to determine the adequacy and level of the due diligence services provided by the third-party.[503] The Commission preliminarily believes that this goal could best be achieved by requiring the NRSRO to disclose any such certifications with the publication of the NRSRO's credit rating to which the certification relates. Therefore, the Commission is proposing to add a new paragraph (a)(2) to Rule 17g–7 that, in conjunction with the proposed prefatory text of paragraph (a), would provide that the NRSRO must include with the publication of a credit rating any written certification related to the credit rating received from a provider of third-party due diligence services pursuant to Section 15E(s)(4)(B) of the Exchange Act.[504]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (a)(2) of Rule 17g–7. The Commission also seeks comment on the following:

1. Would it be appropriate to require the inclusion of the certification of the provider of third-party due diligence services with the publication of the credit rating and the form containing information about the credit rating? Is there an alternative means of disclosing the certifications that would be reasonably designed to ensure they are disseminated to users of the NRSRO's credit ratings? If so, describe the method of disclosure.

H. Third-Party Due Diligence for Asset-Backed Securities

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new paragraph (s), which, as discussed above in Section II.G of this release, has four subparagraphs: (1), (2), (3) and (4).[505] Section 15E(s)(4), "Due diligence services for asset-backed securities," contains four provisions regarding due diligence services relating to an Exchange Act-ABS. Section 15E(s)(4)(A) requires the issuer or underwriter to make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[506] Section 15E(s)(4)(B) requires that in any case in which third-party due diligence services are employed by an NRSRO, an issuer, or an underwriter, the person providing the due diligence services shall provide to any NRSRO that produces a rating to which such services relate, written certification in a format as provided in Section 15E(s)(4)(C).[507] Section 15E(s)(4)(C) of the Exchange Act provides that the Commission shall establish the appropriate format and content for the written certifications required under Section 15E(s)(4)(B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.[508] Finally, Section 15E(s)(4)(D) of the Exchange Act provides that the Commission shall adopt rules requiring an NRSRO, at the time at which the NRSRO produces a rating, to disclose the certification described in Section 15E(s)(4)(B) to the public in a manner that allows the public to determine the adequacy and level of due diligence services provided by a third party.[509]

As discussed below in Section II.H.1 of this release, the Commission is proposing to implement Section 15E(s)(4)(A) of the Exchange Act by proposing amendments to Rule 314 of Regulation S–T and Form ABS–15G, and proposing new Rule 15Ga–2.[510] In

[497] *See* 15 U.S.C. 78o–7(s) and 15 U.S.C. 78o–7(q).

[498] *See* 15 U.S.C. 78o–7(s).

[499] *See* proposed new paragraphs (a)(1)(iii)(A)–(C) of Rule 17g–7.

[500] *Compare* proposed new paragraphs (a)(1)(iii)(A)–(C) of Rule 17g–7, *with* 15 U.S.C. 78o–7(q)(2)(F).

[501] *See* 15 U.S.C. 78o–7(s)(4)(A)–(D). As noted earlier, the term "structured finance product" as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. This broad category of financial instrument includes an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act (15 U.S.C. 78c(a)(77)) and other types of structured debt instruments such as CDOs, including synthetic and hybrid CDOs. The term "Exchange Act-ABS" as used throughout this release refers more narrowly to an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act. 15 U.S.C. 78c(a)(77).

[502] *See* 15 U.S.C. 78o–7(s)(4)(B).

[503] *See* 15 U.S.C. 78o–7(s)(4)(D).

[504] *See* proposed paragraph (a)(2) of Rule 17g–7.

[505] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(s)(1)–(4).

[506] *See* 15 U.S.C. 78o–7(s)(4)(A).

[507] *See* 15 U.S.C. 78o–7(s)(4)(B).

[508] *See* 15 U.S.C. 78o–7(s)(4)(C).

[509] *See* 15 U.S.C. 78o–7(s)(4)(D).

[510] *See* proposed amendments to Rule 314 of Regulation S–T and Form ABS–15G and proposed new Rule 15Ga–2. New Rule 15Ga–2 would be codified at 17 CFR 240.15Ga–2.

addition, as discussed below in Sections II.H.2 and II.H.3 of this release, the Commission is proposing to implement Sections 15E(s)(4)(B) and (C) of the Exchange Act by proposing new Rule 17g–10 and a related form—Form ABS Due Diligence-15E.[511] As discussed above in Section II.G.5 of this release, the Commission is proposing to implement Section 15E(s)(4)(D) by proposing new paragraph (a)(2) to Rule 17g–7.[512]

Before discussing the proposals to implement Sections 15E(s)(4)(A) through (C), the Commission notes the provisions of Section 15E(s)(4) raise two fundamental questions: (1) How will a provider of third-party due diligence services know the identities of the NRSROs producing credit ratings to which its services relate (particularly NRSROs producing unsolicited credit ratings); and (2) when must the certification be provided to the NRSROs? Accordingly, the Commission is requesting comment on these questions in order to consider further guidance or rulemaking to better determine how a provider of third-party due diligence services can comply with the requirement in Section 15E(s)(4)(B) of the Exchange Act.[513]

Request for Comment

The Commission generally requests comment on all aspects of Section 15E(s)(4)(B) of the Exchange Act. The Commission also seeks comment on the following:

1. How would a provider of third-party due diligence services identify the NRSROs producing credit ratings to which the due diligence services relate? For example, would it be sufficient for the provider of third-party due diligence services to contractually require issuers and underwriters that employ it to provide these services to identify the NRSROs engaged by the issuer or underwriter to produce credit ratings for the Exchange Act-ABS and to identify any other NRSROs the issuers and underwriters have notice are producing unsolicited credit ratings for the Exchange Act-ABS? Would issuers and underwriters agree to such contractual terms or would they use a provider of third-party due diligence services that does not demand such terms? Even if issuers and underwriters agree to such contractual terms, would they know the identity of every NRSRO producing a credit rating for the Exchange Act-ABS, particularly NRSROs producing unsolicited credit ratings? Would an appropriate mechanism for providing the certifications to all NRSROs producing a credit rating for the Exchange Act-ABS be to disclose it with the information required by paragraph (a)(3) of Rule 17g–5 (which requires, among other things, the issuer or underwriter to make the information provided to an NRSRO hired to produce a credit rating for a structured finance product such as an Exchange Act-ABS available to any other NRSRO)?[514]

2. In the case where an NRSRO (as opposed to the issuer or underwriter) employs the provider of third-party due diligence services, how would the NRSRO know of any other NRSROs that are producing credit ratings to which the due diligence services relate and provide the identities of such NRSROs to the provider of the third-party due diligence services? If paragraph (a)(3) of Rule 17g–5 would be an appropriate mechanism for providing the certifications to all NRSROs producing a credit rating for the Exchange Act-ABS, could the hired NRSRO obtain a representation from the issuer or underwriter that it would make any certifications received by the NRSRO available to other NRSROs through the process by which the issuer or underwriter makes the information required by paragraph (a)(3) of Rule 17g–5 available to other NRSROs?

3. Should there be some type of centralized database where NRSROs producing credit ratings for an Exchange Act-ABS identify themselves and which would be deemed constructive notice to any provider of third-party due diligence services that is providing services related to the Exchange Act-ABS? If so, should the Commission administer this centralized database or should the issuers and underwriters, providers of third-party due diligence services, NRSROs, or users of credit ratings administer this database?

4. Should there be a centralized database where a provider of third-party due diligence services submits its certification for publication, and should submitting the certification to such a database be deemed constructive receipt by an NRSRO producing a credit rating for an Exchange Act-ABS to which the due diligence services described in the certification relate? Should this database also be the mechanism by which issuers and underwriters make publicly available, pursuant to the requirement in Section 15E(s)(4)(A) of the Exchange Act, the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter? If so, should the Commission administer this centralized database or should the issuers and underwriters, providers of third-party due diligence services, NRSROs, or users of credit ratings administer this database? For example, should the certification be furnished or filed on the Commission's EDGAR system?

5. Should there be a reasonableness test in terms of assessing whether the provider of third-party due diligence services submitted the certification to all NRSROs required to receive the certification? For example, should the provider of third-party due diligence services be required to provide the certification to all NRSROs it knows or reasonably should know are producing a credit rating for which its services relate?

6. How soon after the provider of third-party due diligence services completes its review should the certifications be provided to all NRSROs required to receive it? For example, should the certification be provided "promptly" or within 24 hours, 2 business days, 10 business days, or some other period of time?

7. Should the provider of third-party due diligence services be required to provide the certification to all required NRSROs at the same time so that no single NRSRO has the benefit of using the certification before the other NRSROs that are required to receive it? How would such a requirement be implemented and enforced in practice?

8. Should the requirement to provide the certification to all NRSROs required to receive it sunset after some period of time after the due diligence services are completed such as 30, 60, 90, 120, 150, 180 days or some longer period? For example, should the provider of third-party due diligence services be required to provide the certification to any NRSRO that produces a credit rating to which its services relate until the security matures, is called, is pre-paid, or goes into default?

9. If the provider of third-party due diligence services is hired to provide due diligence services with respect to an initial issuance of securities, would it need to provide the certification at some later time to an NRSRO that does not rate the securities initially but produces a credit rating after the securities have been outstanding for a period of time?

1. Proposed Rule 15Ga–2 and Amendments to Form ABS–15G

The Commission is re-proposing rules, with some revisions, to

[511] *See* proposed new Rule 17g–10 and Form ABS Due Diligence-15E. New Rule 17g–10 would be codified at 17 CFR 240.17g–10 and Form ABS Due Diligence 15E would be identified in the Code of Federal Regulation at 17 CFR 249b.400.

[512] *See* proposed new paragraph (a)(2) of Rule 17g–7.

[513] 15 U.S.C. 78o–7(s)(4)(B).

[514] 17 CFR 240.17g–5(a)(3).

implement Section 15E(s)(4)(A) of the Exchange Act, which requires that an issuer or underwriter of any Exchange Act-ABS make publicly available the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter.[515] The Commission previously proposed to implement Section 15E(s)(4)(A) of the Exchange Act as part of a set of rules proposed to implement Section 945 of the Dodd-Frank Act.[516] Under those proposals, an issuer of a registered Exchange Act-ABS offering would have been required to disclose the findings and conclusions of any third party engaged to perform a review obtained by the issuer, as required by Section 15E(s)(4)(A), in the prospectus.[517] In the case of unregistered Exchange Act-ABS offerings, the Commission proposed new Rule 15Ga–2.[518] This rule would have required an issuer of Exchange Act-ABS to file a new Form ABS–15G to disclose the findings and conclusions of any third-party engaged to perform a review obtained by an issuer with respect to unregistered transactions.[519] Proposed Rule 15Ga–2 also would have required an underwriter of Exchange Act-ABS to file Form ABS–15G with the same information for reports obtained by an underwriter in registered and unregistered transactions.[520] Finally, proposed Form ABS–15G would have been required to be filed with the Commission on EDGAR five business days prior to the first sale of the offering.[521]

With respect to these proposals, the Commission requested comment on, among other things, whether rules implementing Section 15E(s)(4)(A) of the Exchange Act should be part of a later rulemaking under Section 15E.[522] Some commenters stated that Section 15E(s)(4) should be read as a whole, and that it would be inappropriate to consider subsection (A) alone.[523] These commenters suggested postponing implementation of Section 15E(s)(4)(A) until the Commission implements Section 15E(s)(4)(B), (C) and (D).[524] These commenters argued that Rule 15Ga–2, as proposed, would have "construe[d] Section 15E(s)(4)(A) in a vacuum, divorced from Congress' intent to regulate NRSROs and the credit ratings process."[525] These commenters also argued that proposed Rule 15Ga–2 was inappropriately broad. One such commenter suggested that Rule 15Ga–2 be modified to apply only to any third-party due diligence report prepared for an issuer or underwriter of Exchange Act-ABS specifically for the purpose of having the issuer or underwriter share the report with an NRSRO issuing a credit rating for the securities.[526]

In January 2011, the Commission adopted rules implementing Section 7(d) of the Securities Act and, at the same time, deferred action on implementing Section 15E(s)(4)(A).[527] After considering the comment letters relating to Section 15E(s)(4)(A), the Commission is re-proposing Rule 15Ga–2 with revisions.[528] As proposed in October 2010, Rule 15Ga–2 would have required issuers and underwriters of Exchange Act-ABS to file Form ABS–15G containing, or provide prospectus disclosure with respect to, the findings and conclusions of any report of a third-party engaged for purposes of performing a review of the pool assets obtained by the issuer or underwriter.[529] As noted above, the Commission included this proposal in the context of rulemaking with respect to issuer review of assets required by Section 7(d) of the Securities Act.[530]

After reviewing the comments, the Commission now believes that Section 15E(s)(4)(A) of the Exchange Act, when considered in the context of Sections 15E(s)(4)(B), (C) and (D), should be interpreted more narrowly to relate to those provisions.[531] Therefore, as re-proposed, Rule 15Ga–2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter.[532] The rule would define "due diligence report" as any report containing findings and conclusions relating to "due diligence services" as defined in proposed new Rule 17g–10 discussed below in Section II.H.2 of this release. Under the re-proposal, the disclosure would be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS.[533] Thus, unlike the October 2010 proposal, discussed above, issuers in registered Exchange Act-ABS offerings would not be required to include the disclosure in their prospectuses.

In addition, under the Commission's re-proposal, an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph

[515] *See* 15 U.S.C. 78o–7(s)(4)(A).

[516] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Securities Act Release No. 9150 (Oct. 13, 2010), 75 FR 64182 (Oct. 19, 2010). In the same release in which the Commission proposed to implement Section 15E(s)(4)(A), the Commission also proposed to implement Section 7(d) of the Securities Act (15 U.S.C. 77g(d)), as added by Public Law 111–203 § 945. Section 7(d) of the Securities Act requires the Commission to adopt rules that, with respect to a registration statement for an asset-backed security, will require the issuer of the security to: (1) Perform a review of the assets underlying the asset-backed security; and (2) disclose the nature of the review. *See* 15 U.S.C. 77g(d)(1) and (2). The Commission implemented this provision by adopting new rule 17 CFR 230.193 ("Rule 193") and amendments to 17 CFR 229.1111 ("Item 1111 of Regulation AB"). *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* Securities Act Release No. 9176 (Jan. 20, 2011), 76 FR 4231 (Jan. 25, 2011).

[517] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 75 FR at 64188–64190 (Oct. 19, 2010).

[518] *Id.*

[519] *Id.*

[520] *Id.*

[521] *Id.*

[522] *Id.*

[523] *See* comment letters from American Bar Association ("ABA"); National Association of Bond Lawyers ("NABL") (responding to *Issuer Review of Asset in Offerings of Asset-Backed Securities,* 75 FR 64182 (Oct. 19, 2010)). The comment letters are available at *http://sec.gov/comments/s7–26–10/s72610.shtml.*

[524] *See* comment letters from ABA and NABL.

[525] *See* comment letters from ABA and NABL.

[526] *See* comment letter from ABA.

[527] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 76 FR 4231 (Jan. 25, 2011). Although the Commission deferred action on implementing Section 15E(s)(4)(A), the Commission adopted, in a separate release, new Form ABS–15G to implement Section 943 of the Dodd-Frank Act. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489 (Jan. 26, 2011).

[528] *See* proposed new Rule 15Ga–2. The Commission also is proposing conforming amendments to Form ABS–15G.

[529] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 75 FR at 64188–64190 (Oct. 19, 2010).

[530] *See Issuer Review of Assets in Offerings of Asset-Backed Securities,* 76 FR 4231 (Jan. 25, 2011).

[531] *See* 15 U.S.C 78o–7(s)(4)(A) through (D), which relate to due diligence performed by third-parties with respect to Exchange Act-ABS.

[532] *See* proposed new Rule 15Ga–2 and conforming changes to Form ABS–15G. For purposes of this rule, consistent with the definition of "issuer" in proposed new Rule 17g–10, the issuer is the depositor or sponsor that participates in the issuance of Exchange Act-ABS. *See* discussion below in Section II.H.2 of this release.

[533] The Commission is proposing that the form be deemed "furnished" rather than "filed" for purposes of Section 18 of the Exchange Act (15 U.S.C. 78r) and the liabilities of that section, unless the issuer specifically states that the form be considered "filed" under the Exchange Act or incorporates it by reference into a filing under the Securities Act or the Exchange Act.

(a)(1) of Rule 17g–7.[534] As discussed above in Section II.G.3 of this release, proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7 would implement Section 15E(s)(3)(A)(v) of the Exchange Act by requiring an NRSRO to disclose in the form whether and to what extent third-party due diligence services were used by the NRSRO, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third-party. In addition, as discussed below in Section II.H.3 of this release, the Commission is proposing that the certification a provider of third-party due diligence services would need to provide to an NRSRO producing a credit rating for an Exchange Act-ABS pursuant to Section 15E(s)(4)(B) and (C) include a summary of the findings and conclusions of the provider of third-party due diligence services.[535] And, as discussed above in Section II.G.5 of this release, an NRSRO would be required to include the certification with the publication of the credit rating.[536]

For these reasons, having the issuer and underwriter publicly disclose the same information an NRSRO must, when applicable, disclose pursuant to proposed new paragraphs (a)(1)(ii)(F) and (a)(2) of Rule 17g–7 with the publication of a credit rating would be redundant. Moreover, as discussed earlier, potential investors in Exchange Act-ABS may be accustomed to receiving and reviewing expected or preliminary credit ratings issued by NRSROs prior to making an investment decision and proposed new paragraph (a) of Rule 17g–7 would require the form and any certifications to be included with the issuance of such credit ratings. Therefore, the Commission believes that an effective means of disseminating this information to investors and other users of credit ratings would be to include it with the publication of the credit rating. Also, because the form would contain substantial additional information, consolidating the information in one disclosure would benefit investors and other users of credit ratings.

As noted above, the issuer or underwriter would not need to furnish Form ABS–15G if it obtained a representation from each NRSRO engaged to produce a credit rating upon which the issuer or underwriter could reasonably rely.[537] The Commission preliminarily recognizes, however, that there may be instances where, notwithstanding an issuer's or underwriter's reasonable reliance on a representation by an NRSRO engaged to produce a credit rating to publicly disclose the required information, the NRSRO fails to make such information publicly available in its information disclosure form pursuant to proposed Rule 17g–7(a)(1) five business days prior to the first sale in the offering.[538] Therefore, the Commission proposes to require that an issuer or underwriter furnish, two business days prior to the first sale in the offering, Form ABS–15G with the information required by proposed Rule 15Ga–2 if the NRSRO fails to comply with its representation to make such information publicly available in an information disclosure form generated pursuant to proposed paragraph (a)(1) of Rule 17g–7 five business days prior to the first sale in the offering. Under the proposal, issuers or underwriters would be permitted to reasonably rely on a representation by an NRSRO to meet their obligation to publicly disclose the information required to be provided in Form ABS–15G. However, they would continue to be responsible for furnishing Form ABS–15G two business days prior to the first sale in the offering if the NRSRO does not publicly disclose the information five business days prior to the first sale in the offering.

This "reasonable reliance" provision would parallel requirements in paragraph (a)(3) of Rule 17g–5 that require an NRSRO to obtain certain representations from arrangers of structured finance products that hire the NRSRO to determine a credit rating for the structured finance product.[539] When adopting this requirement the Commission stated, "The question of whether reliance was reasonable will depend on the facts and circumstances of a given situation."[540] The Commission further stated, "The factors relevant to this analysis would include, but not be limited to: (1) Ongoing or prior failures by the arranger to adhere to the representations; or (2) a pattern of conduct by the arranger where it fails to promptly correct breaches of its representations."[541] The Commission preliminarily believes that the same would hold true with respect to relying on the representations from NRSROs obtained for the purposes of proposed Rule 15Ga–2.

The Commission notes that Rule 193, adopted to implement Section 7(d) of the Securities Act, requires issuers of registered Exchange Act-ABS to perform a review of the pool assets underlying the asset-backed security.[542] This review must be designed and effected to provide reasonable assurance that the prospectus disclosure regarding the pool assets is accurate in all material respects.[543] Although third-party due diligence reports may be relevant to the review, neither Section 7(d) of the Securities Act nor Rule 193 ties the review to third-party due diligence reports.[544] Rule 193 permits, though does not require, an issuer to rely on one or more third parties to fulfill its obligation to perform the required review.[545]

The Commission recognizes Exchange Act-ABS issuers may routinely hire third-parties to conduct various types of reviews and believes that issuers may employ third parties to assist in satisfying their obligations to perform a review under Rule 193.[546] The Commission also recognizes that an issuer of Exchange Act-ABS may obtain a third-party due diligence report from a third party the issuer has engaged to assist in performing its Rule 193 review. Nonetheless, the Commission believes that the third-party due diligence reports referenced in Section 15E(s)(4) of the Exchange Act are not the same as the review required by Section 7(d) of the Securities Act and Rule 193.[547] Instead, Section 15E(s)(4) of the Exchange Act and, consequently, proposed Rule 15Ga–2 relate to a

[534] *See* 15 U.S.C. 78o–7(s)(3)(A)(v). In this context, the Commission preliminarily believes that the term "publicly disclose" means make the findings and conclusions readily available to any users of credit ratings. Consequently, an NRSRO that agreed to make the findings and conclusions available only to its subscribers or prospective investors in the Exchange Act-ABS would not satisfy this proposed requirement.

[535] *See* Item 5 of proposed new Form ABS Due Diligence-15E.

[536] *See* proposed new paragraph (a)(2) of Rule 17g–7.

[537] The issuer or underwriter would be required to provide to the Commission, upon request, information regarding the manner in which it obtained the representation. The Commission notes that in most cases the NRSROs likely would have an independent obligation to disclose the information pursuant to the proposed amendments to Rule 17g–7 and proposed new Rule 17g–10 and Form ABS Due Diligence-15E.

[538] The NRSRO's failure to disclose the certification would be a violation of proposed paragraph (a) of Rule 17g–7.

[539] *See* 17 CFR 17g–5(a)(3); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63844–63850 (Dec. 4, 2009).

[540] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63847 (Dec. 4, 2009).

[541] *Id.*

[542] *See* 17 CFR 230.193.

[543] *Id.*

[544] *See* 15 U.S.C. 77g(d) and 17 CFR 230.193.

[545] *Id.*

[546] The Commission also notes that an issuer may rely on multiple third-parties to fulfill its Rule 193 review obligation, provided the issuer complies with the requirements of Rule 193 for each third party.

[547] *Compare* 15 U.S.C. 77g(d) and 17 CFR 230.193, *with* 15 U.S.C. 78o–7(s)(4).

particular type of report that is relevant to the determination of a credit rating by an NRSRO. By contrast, Section 7(d) of the Securities Act and Rule 193 relate to a more general concept of an issuer review of the assets underlying an Exchange Act-ABS, one aspect of which may (or may not) include a third-party due diligence report. As a result, the treatment of due diligence reports under proposed Rule 15Ga–2 is not predicated on the use of third-party due diligence services to assist with reviews under Rule 193.[548] For these reasons, the Commission also is proposing that Rule 15Ga–2 apply only with respect to Exchange-Act ABS that are to be rated by an NRSRO.[549]

As noted above, the disclosure required by proposed Rule 15Ga–2 would be required to be provided in Form ABS–15G. Unlike the first proposal, the Commission now proposes to require issuers in registered Exchange Act-ABS transactions to include the disclosure required by proposed Rule 15Ga–2 in Form ABS–15G, rather than in the prospectus. Whether the findings and conclusions of a third-party are part of the Rule 193 review and, therefore, included in the prospectus disclosure is dictated by the requirements of Rule 193 and Item 1111 of Regulation AB.[550] The Commission is not proposing to separately require that disclosure provided in connection with Rule 15Ga–2 regarding any third-party due diligence report be provided in the prospectus for a registered offering, because the information required by proposed Rule 15Ga–2 only pertains to the findings and conclusions of a third-party due diligence report relevant to the determination of a credit rating.

As stated above, Section 15E(s)(4)(A) applies to issuers and underwriters of both registered and unregistered offerings of Exchange Act-ABS. Thus, proposed Rule 15Ga–2 would apply to a municipal entity that sponsors or issues Exchange Act-ABS ("municipal Exchange Act-ABS") or an underwriter of municipal Exchange Act-ABS, if the municipal entity or underwriter of the offering obtains a third-party due-diligence report, as defined by the proposed rule, and the municipal Exchange Act-ABS is to be rated by an NRSRO. Since Section 15E(s)(4) relates to oversight of NRSROs, commenters to the first proposal noted that a significant difference between municipal Exchange Act-ABS and more typical Exchange Act-ABS is that the Municipal Securities Rulemaking Board[551] collects and publicly disseminates market information and information about municipal securities issuers and offerings on its centralized public database, the Electronic Municipal Market Access system ("EMMA").[552] Consistent with suggestions from commenters and the Commission's approach in implementing Section 943 of the Dodd-Frank Act,[553] the Commission proposes to permit municipal securitizers of Exchange Act-ABS, or underwriters in the offering, to provide the information required by Form ABS–15G on EMMA.[554] The Commission believes this would limit the cost and burden on issuers and underwriters of municipal Exchange Act-ABS subject to the new rule, as well as provide the disclosure for investors in the same location as other disclosures regarding municipal ABS. Since Section 15E(s)(4) relates to oversight of NRSROs and the ratings process, the Commission preliminarily believes it is not appropriate to exempt any particular issuers if they receive a rating for the securities.[555]

The Commission recognizes that public disclosure of information relating to an unregistered Exchange Act-ABS offering could raise concerns regarding the reliance by an issuer or underwriter on the private offering exemptions and safe harbors under the Securities Act.[556] As noted above, the Commission intends for Form ABS–15G to be used for both registered and unregistered ABS offerings. The Commission is of the view that issuers and underwriters can disclose information required by Rule 15Ga–2 without jeopardizing reliance on those exemptions and safe harbors, provided the only information made publicly available on the form is that which is required by the proposed rule, and the issuer does not otherwise use Form ABS–15G to offer or sell securities in a manner that conditions the market for offers or sales of its securities.[557]

The Commission is proposing that the disclosures—whether made by the engaged NRSROs or the issuer or underwriter—be made five business days prior to the first sale of the offering. Since the form an NRSRO would be required to include with a credit rating pursuant to proposed new paragraph (a) of Rule 17g–7 would not be required to be filed with the Commission, the Commission believes it would be consistent to permit issuers and underwriters to furnish, rather than file, Form ABS–15G. The Commission proposes that Form ABS–15G be signed by the senior officer of the depositor in charge of securitization, if the form were provided to include the findings and conclusions of a third-party hired by the

[548] The Commission does not intend for all third-parties from whom the issuer obtains a third-party due diligence report, as defined in proposed Rule 15Ga–2, to be named in the registration statement and consent to being named as an expert, in accordance with the requirements in Rule 193, solely because an issuer files Form ABS–15G. If the issuer's prospectus disclosure attributes the findings and conclusions of the Rule 193 review to the third-party from whom it obtains a third-party due diligence report, however, the third-party would be required to be named in the registration statement and consent to being named as an expert in accordance with Rule 436 under the Securities Act.

[549] *See* proposed new Rule 15Ga–2.

[550] *See* 17 CFR 230.193 and 17 CFR 229.1111.

[551] The MSRB, a self-regulatory organization subject to oversight by the Commission, regulates securities firms and banks that underwrite, trade and sell municipal securities.

[552] *See* comment letters from Minnesota Housing Finance Agency, NABL, and the National Council of State Housing Agencies (responding to proposals in *Issuer Review of Assets in Offerings of Asset-Backed Securities,* 75 FR 64182 (Oct. 19, 2010)).

[553] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR 4489 (Jan. 26, 2011).

[554] *See* proposed amendments to Rule 314 of Regulation S–T. 17 CFR 232.314. A municipal securitizer is defined as a securitizer (as that term in defined in Section 15(G)(a) of the Exchange Act (__ U.S.C. ___)) that is any State or Territory of the United States, the District of Columbia, any political subdivision of any State, Territory, or the District of Columbia, or any public instrumentality of one or more States, Territories, or the District of Columbia.

[555] As noted earlier, the Commission is soliciting comment in Section II.M.4.a of this release with respect Items 6 and 7 of Form NRSRO about how certain types of obligors, securities, and money market instruments should be classified for purposes of providing the approximate number of credit ratings outstanding in each class of credit rating for which an applicant is seeking registration (Item 6) or an NRSRO is registered (Item 7). In this regard, the Commission solicits comment on whether municipal structured finance issuers should be classified as (1) issuers of asset-backed securities identified in Section 15E(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 15E(a)(62)(A)(v) of the Exchange Act. The Commission is requesting comment on this matter with respect to disclosing the number of credit ratings outstanding in a particular class of credit ratings in Form NRSRO (and potentially for purposes of the proposed amendments to Exhibit 1 to Form NRSRO and the disclosure of information about the histories of credit ratings under proposed new paragraph (b) of Rule 17g–7). The Commission, in seeking comment on these matters, is not suggesting an issuer of municipal Exchange Act-ABS should be exempt from requirements in the securities laws that apply to Exchange Act-ABS because it might appropriately be classified as an issuer of government securities, municipal securities, or securities issued by a foreign government identified in Section 15E(a)(62)(A)(v) of the Exchange Act for purposes of Items 6 and 7 of Form NRSRO.

[556] *See* 15 U.S.C. 77d(2), 17 CFR 230.144A, and 17 CFR 230.501–508.

[557] Furnishing proposed Form ABS–15G would not foreclose the reliance of an issuer on the private offering exemption in the Securities Act and the safe harbor for offshore transactions from the registration provisions in Section 5. 15 U.S.C. 77e.

issuer. The Commission believes that requiring the senior officer of the depositor in charge of securitization to sign the form is consistent with other signature requirements for filings relating to Exchange Act-ABS.[558] If the form included the findings and conclusions of a third-party engaged by the underwriter, then the form would be signed by a duly authorized officer of the underwriter. The Commission believes that requiring Form ABS–15G be signed by a duly authorized officer of the underwriter would provide an incentive for the person who signs the form to review it for accuracy.

Request for Comment

The Commission generally requests comment on all aspects of proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G. The Commission also seeks comment on the following:

1. Is proposed Rule 15Ga–2 appropriate? Is the proposed definition of "third-party due diligence report" appropriate? Is there an alternative definition that would be consistent with the requirements of Section 15E(s)(4)?

2. The Commission is proposing to require disclosure regarding the findings and conclusions of third-party due diligence reports for both registered and unregistered transactions. Is there any reason Section 15E(s)(4)(A) of the Exchange Act should not apply to both registered and unregistered Exchange Act-ABS transactions? If the requirement applies to both registered and unregistered transactions, should the universe of Exchange Act-ABS offerings that would be subject to the requirement be defined, as proposed, as an offering of Exchange Act-ABS, as that term is defined in Section 3(a)(77) of the Exchange Act?

3. Proposed Rule 15Ga–2 would apply only if the Exchange Act-ABS is to be rated by a NRSRO. Is that appropriate?[559] Why or why not?

4. Should the Commission exempt any issuers, underwriters or other parties from this requirement? As proposed, Rule 15Ga–2 would apply to issuers and underwriters of Exchange Act-ABS that are exempted securities as defined in Section 3(a)(12) of the Exchange Act, including government securities and municipal securities. Should issuers or underwriters of such exempted securities be exempt from this provision?[560] Is the proposed accommodation for municipal Exchange Act-ABS appropriate?

5. Is the proposal to not require the issuer or underwriter to furnish Form ABS–15G if it obtains the necessary representations from the NRSROs engaged to produce credit ratings for the Exchange Act-ABS appropriate? For example, would investors and other users of credit ratings benefit from having issuers and underwriters *and* NRSROs disclose the findings and conclusions of the provider of third-party due diligence services? In addition, would NRSROs engaged to determine a credit rating for an Exchange Act-ABS agree to make the disclosure? Could potential concerns among NRSROs about making the disclosure be addressed by permitting them to rely on the disclosure the provider of third-party due diligence services would need to make about the findings and conclusions of the review in Item 5 of proposed new Form Due Diligence-15E discussed below in Section II.H.3 of this release?

Under proposed Rule 15Ga–2, an issuer or underwriter would not be required to furnish Form ABS–15G if it receives a representation from an NRSRO that can be reasonably relied upon that the NRSRO will publicly disclose the required information five business days prior to the first sale in the offering in an information disclosure form generated pursuant to Rule 17g–7(a)(1). Should the Commission, as proposed, also require an issuer or underwriter to furnish Form ABS–15G if the NRSRO fails to publicly disclose in an information disclosure form the required disclosure five business days prior to the first sale in the offering? If so, should the issuer or underwriter be required, as proposed, to furnish Form ABS–15G two business days prior to the first sale in the offering? Should the requirement instead be three days before? Alternatively, should the Commission require that the issuer or underwriter wait another five business days after furnishing Form ABS–15G before the first sale? If not, how long in advance of the first sale should issuers or underwriters be required to furnish Form ABS–15G? Should an issuer or underwriter not be required to furnish Form ABS–15G two business days prior to the first sale in the offering if the NRSRO fails to publicly disclose the required information five business days prior to the first sale, but does publicly disclose the information on the fourth or third business day prior to the first sale since an issuer's or underwriter's furnishing in that case would result in duplicative disclosure? If so, how could an NRSRO be properly incentivized to publicly disclose the required information five business days prior to the first sale in the offering?

6. Does the proposal to require an issuer or underwriter to furnish Form ABS–15G in the event that the NRSRO fails to fulfill its representation offset the effectiveness or benefit of the proposal to permit issuers and underwriters to reasonably rely on a representation from an NRSRO?

7. Under the proposal, the issuer or underwriter would be required to provide to the Commission, upon request, information regarding the manner in which it obtained the representation of the NRSRO engaged to produce credit ratings. Are there any other provisions that should be added to ensure compliance with the proposal not to require the issuer or underwriter to furnish Form ABS–15G if it obtains the necessary representations from the NRSRO?

8. Are there other appropriate means of making the findings and conclusions of third-party due diligence reports "publicly available" as required by Section 15E(s)(4)(A) of the Exchange Act? Is furnishing information regarding the findings and conclusions of the report of the provider of third-party due diligence services on proposed Form ABS–15G on EDGAR (except with respect to offerings of municipal Exchange Act-ABS) an appropriate way for issuers in unregistered offerings and for underwriters in registered and unregistered offerings to make this information publicly available? Should the Form ABS–15G be required to be filed instead?

9. Would the proposed requirement that Form ABS–15G be furnished five business days prior to first sale provide investors with sufficient time to review the findings and conclusions contained therein? Would it provide NRSROs with sufficient time to take the included information into account in determining a rating? If not, what would be a more appropriate deadline and why? Are five business days also appropriate in

[558] *See, e.g.,* signature requirement for Form 10–K (17 CFR 249.312). It is also consistent with the Commission's proposed signature requirements for the registration statements for offerings of asset-backed securities. *See Asset-Backed Securities,* 75 FR 23328 (May 3, 2010).

[559] For example, Fannie Mae and Freddie Mac are government sponsored enterprises ("GSEs") that purchase mortgage loans and issue or guarantee mortgage-backed securities. Mortgage-backed securities issued or guaranteed by these GSEs have been, and continue to be, exempt from registration under the Securities Act and reporting requirements under Sections 13 or 15 of the Exchange Act. These securities have not been, and are not currently, rated by credit rating agencies.

[560] Exchange Act "exempted securities" include government securities and municipal securities, as defined under the Exchange Act. For example, mortgage-backed securities issued by the Government National Mortgage Association are fully modified pass-through securities guaranteed by the full faith and credit of the United States government. *See http://www.ginniemae.gov/.*

unregistered offerings? Is there reason to require a different number of days in unregistered offerings?

10. Is the proposed signature requirement for Form ABS–15G appropriate? Is it necessary? Conversely, are there other appropriate individuals that are better suited to sign the form?

11. Should issuers of registered Exchange Act-ABS offerings be required to furnish the information required by proposed Rule 15Ga–2 on Form ABS–15G and not be required to provide the information in a prospectus that is filed with the Commission, as proposed? Why or why not?

2. Proposed New Rule 17g–10

As noted above, Section 15E(s)(4)(C) of the Exchange Act provides that the Commission shall establish the appropriate format and content for the written certifications required under Section 15E(s)(4)(B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating for an Exchange Act-ABS.[561] The Commission preliminarily believes providers of third-party due diligence services most commonly are hired by issuers and underwriters to perform reviews of pools of mortgages that will be securitized into an RMBS; accordingly, the following discussion of proposed Rule 17g–10 and Form ABS Due Diligence–15E centers on RMBS.[562] The proposed rule and form, however, would apply to all Exchange Act-ABS. Generally, in the RMBS context, the provider of third-party due diligence services is hired by the entity (*e.g.,* the underwriter, sponsor, or depositor) purchasing the pool of mortgage loans for the purpose of securitizing them.[563] In conducting a review, the provider of third-party due diligence services analyzes a sample (for example, 25%) of the loans in the pool for one or more of the following purposes: (1) To assess the quality of the loan-by-loan data in the electronic file ("loan-tape") that aggregates the information for the pool by comparing the information on the loan tape for each loan in the sample with the information contained on the hard-copy documents in the loan file; (2) to determine whether each loan in the sample adheres to the underwriting guidelines of the loan originator; (3) to assess the validity of the appraised value of the property indicated on the loan tape that collateralizes each loan in the sample; and (4) to determine whether the originator complied with Federal, state, and local laws in making each loan in the sample. The NRSROs most active in rating RMBS have incorporated requirements for the engagement of providers of third-party due diligence services by the entities requesting such ratings (for example, the underwriter or sponsor of the RMBS) into their procedures and methodologies for determining RMBS credit ratings.[564] Moreover, the procedures and methodologies of these NRSROs prescribe the minimum scope and manner of the review of the provider of third-party due diligence services necessary to obtain a credit rating for the RMBS, including the minimum sample size of the loans to be selected from the pool.[565]

To implement the rulemaking mandated by Section 15E(s)(4)(C) of the Exchange Act, the Commission is proposing new Rule 17g–10 and related Form ABS Due Diligence–15E.[566] Proposed new Rule 17g–10 would contain three paragraphs: (a), (b) and (c).[567] Proposed paragraph (a) would provide that the written certification required pursuant to Section 15E(s)(4)(B) of the Exchange Act must be on Form ABS Due Diligence–15E.[568] In other words, a provider of third-party due diligence services would need to use Form ABS Due Diligence–15E to meet the requirement in Section 15E(s)(4)(B) of the Exchange Act.[569]

Proposed paragraph (b) of new Rule 17g–10 would provide that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[570] This proposal is designed to ensure that the person executing the certification on behalf of the provider of third-party due diligence services has responsibilities that will make the person aware of the basis for the information being provided in the form. This proposed requirement parallels paragraph (b) of Rule 17g–3, which requires an NRSRO to attach to the financial reports required by that rule a signed statement by a duly authorized person associated with the NRSRO stating, among other things, that the person has responsibility for the financial reports.[571]

Proposed paragraph (c) of new Rule 17g–10 would contain four definitions to be used for the purposes of Section 15E(s)(4)(B) and Rule 17g–10.[572] Proposed paragraph (c)(1) would define the meaning of "due diligence services."[573] The Commission preliminarily believes such a definition is necessary because, while the requirements of Section 15E(s)(4)(B) are triggered, among other things, by providing due diligence services, the Dodd-Frank Act does not define the type of activities that constitute "due diligence services" in the Exchange Act-

[561] *See* 15 U.S.C. 78o–7(s)(4)(C).

[562] *See, e.g.,* Testimony of Vicki Beal, Senior Vice President, Clayton Holdings, before the Financial Crisis Inquiry Commission (Sept. 23, 2010).

[563] *Id.*

[564] *See, e.g., US RMBS Ratings Criteria,* Fitch, Inc. ("Fitch") (Dec. 3, 2009) ("In addition to Fitch's originator/issuer review and ResiLogic loan-level asset analysis of the mortgage pool, Fitch will require third-party loan-level reviews on all residential mortgage pools that Fitch is asked to rate. The reviews will be conducted by a "due diligence" company (review company) prior to Fitch providing a rating on the transaction."); *Criteria for Evaluating Independent Third-Party Loan Level Reviews for US RMBS,* Moody's Investors Service, Inc. ("Moody's") (Nov. 24, 2008) ("Moody's will not rate a transaction unless it has received a report from the third-party review firm as to the TPR scope, procedure and findings. The report must include a narrative summary of the review and an initial TPR findings report."); *Incorporating Third-Party Due Diligence Results Into The U.S. RMBS Rating Process,* Standard & Poor's Ratings Services ("S&P") (Nov. 25, 2008) ("Standard & Poor's believes that using third-party due diligence results in our rating analysis will increase transparency and strengthen the rating process. Our due diligence review ratings criteria will be effective Dec. 1, 2008, and are intended to increase our insight into the quality and validity of the information used to originate the mortgage loans pooled into securities.").

[565] For example, for established originators and loan programs, Fitch requires the randomly selected minimum sample size to be the larger of 200 loans or 10% of the pool for prime loans and the larger of 400 loans or 20% of the pool for Alt-A/subprime and all other product types. Moreover, if originators or their loan programs have had less than two years of performance history, Fitch requires that the sample size should be doubled. Moody's defines its minimum sample size through statistical techniques. Specifically, Moody's requires that the sample size must not be less than that computed using a 95% confidence level, a 5% precision level, and an assumed error rate equal to the higher of the historic error rate for the originator or a Minimum Assumed Error Rate. S&P requires a sample that is the greater of either the number of loans needed for a statistically valid sample, or a 10% random sample for subprime and 5% sample for prime. At a minimum, S&P states that the number of loans in the sample should be 200 for subprime, and 100 for prime. S&P defines a statistically valid sample as the number of loans based on a 5% one-tailed level of significance with a 2% level of precision. S&P also expects that the number of loans in the sample also will be a function of an estimate of an error rate.

[566] *See* proposed new Rule 17g–10 and new Form ABS Due Diligence–15E.

[567] *See* proposed paragraphs (a), (b) and (c) of Rule 17g–10.

[568] *See* proposed paragraph (a) of new Rule 17g–10.

[569] *See* 15 U.S.C. 78o–7(s)(4)(B) and proposed paragraph (a) of new Rule 17g–10.

[570] *See* proposed paragraph (b) of Rule 17g–10.

[571] *See* 17 CFR 240.17g–3(b).

[572] *See* proposed paragraph (c) of new Rule 17g–10 and 15 U.S.C. 78o–7(s)(4)(B).

[573] *See* proposed paragraph (c)(1) of new Rule 17g–10.

ABS context.[574] Consequently, the Commission preliminarily believes a definition would provide guidance to those entities providing due diligence services as to when the requirements of the statute and proposed new Rule 17g–10 would apply. In addition, a definition could help avoid overly broad interpretations of the meaning of "due diligence services" that cause entities not providing due diligence services to needlessly provide certifications to NRSROs.

The Commission intends the definition of "due diligence services" in the Exchange Act-ABS context to cover services provided by entities typically considered to be providers of third-party due diligence services in the securitization market and does not intend it to cover every type of person that might perform some type of diligence in the offering process. As discussed below, the Commission believes that the scope of Section 15E(s)(4)(A) is intended to address third-party due diligence reports obtained by issuers or underwriters from these specialized providers of due diligence services that are relevant to the determination of a credit rating for an Exchange Act-ABS by an NRSRO.

The Commission preliminarily believes, as discussed above, there are four categories of reviews undertaken by entities commonly understood as providers of third-party due diligence services for issuances of RMBS that NRSROs have deemed relevant for determining credit ratings for such Exchange Act-ABS.[575] Consequently, the proposed definition would identify each of the four categories. In addition, because the Commission's understanding of due diligence services largely is based on such services as applied to pools of mortgage loans, the Commission is proposing a catchall component to the proposed definition.[576] The proposed catchall would be designed to apply to due diligence services used for pools of other asset classes (*e.g.,* commercial loans, corporate loans, student loans, or credit card receivables) to the extent that providers of third-party due diligence services currently provide or in the future begin providing due diligence services with respect to other asset classes and those services, because of the different nature of the assets, do not fall into one of the four other categories.

Under the Commission's proposed definition of "due diligence services," an entity would be deemed to have provided "due diligence services" if it engaged in a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any one of the five types of activities identified in proposed paragraphs (c)(1)(i) through (v) of new Rule 17g–10 (*i.e.,* the components of the proposed definition would be disjunctive).[577] The first category of "due diligence service" would be identified in proposed paragraph (c)(1)(i) of new Rule 17g–10 as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the quality or integrity of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets.[578] This type of review could entail comparing the data on loan-tape with the data on the hard-copy documentation in an underlying sampled loan file to verify that the loan-tape data matches and correctly represents the content of the loan file under review.[579] The provider of due diligence services would need to note any differences (exceptions) between the loan-tape data and the information in the loan file. This type of review also could entail verifying that the loan-tape contains all the information about the underlying assets the NRSRO requires for the purpose of determining a credit rating and whether that information is presented in the format required by the NRSRO.[580] For example, some NRSROs may specify items of data ("data fields") about a mortgage loan that must be included on the loan tape for an RMBS such as occupancy status, property type, loan purpose, documentation type, current FICO score of the borrower, combined original loan to value ratio, total debt-to-income ratio, and zip code of the residence.[581]

The second category of "due diligence service" would be identified in proposed paragraph (c)(1)(ii) of new Rule 17g–10 as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the origination of the assets conformed to stated underwriting or credit extension guidelines, standards, criteria, or other requirements.[582] This type of review could entail reviewing whether a sampled loan meets the originator's underwriting guidelines or, if not, that the originator provided a reasonable and documented exception to support the decision to make the loan.[583] This type of review also could entail how the originator verified information in a sampled loan underlying an RMBS such as the borrower's occupancy status with respect to the residence (*e.g.,* primary residence, second home, or rental property), the borrower's income, the borrower's assets, and the borrower's employment status.[584]

The third category of "due diligence service" would be identified in proposed paragraph (c)(1)(iii) of new Rule 17g–10 as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the value of collateral securing such assets.[585] This type of review could entail analyzing how the originator verified the value of the asset. For example, for an RMBS, an NRSRO might require that the review consider the quality of the appraiser of the property and the quality of the appraisal.[586] This could include reviewing whether the appraiser used a valuation model.[587] It also could require the provider of third-party due diligence services to separately use a valuation model if the reviewer believes that the original appraised value of the property is less than the value presented by the originator.[588]

The fourth category of "due diligence service" would be identified in proposed paragraph (c)(1)(iv) of new Rule 17g–10 as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the originator of the assets complied with Federal, state, or local laws or regulations.[589] This type of review could entail—with respect to an RMBS—analyzing legal documentation

[574] *See* 15 U.S.C. 78o–7(s)(4)(B).

[575] *See, e.g., US RMBS Ratings Criteria,* Fitch (Dec. 3, 2009), *Criteria for Evaluating Independent Third-Party Loan Level Reviews for US RMBS,* Moody's (Nov. 24, 2008), *Incorporating Third-Party Due Diligence Results Into The U.S. RMBS Rating Process,* S&P (Nov. 25, 2008).

[576] *See* proposed paragraph (c)(1)(v) of new Rule 17g–10.

[577] *See* proposed paragraphs (c)(1)(i)–(v) of new Rule 17g–10.

[578] *See* proposed paragraphs (c)(1)(i) of new Rule 17g–10.

[579] *See, e.g., US RMBS Ratings Criteria,* Fitch (Dec. 3, 2009).

[580] *Id.*

[581] *See, e.g., Incorporating Third-Party Due Diligence Results Into The U.S. RMBS Rating Process,* S&P (Nov. 25, 2008).

[582] *See* proposed paragraphs (c)(1)(ii) of new Rule 17g–10.

[583] *See, e.g., Criteria for Evaluating Independent Third-Party Loan Level Reviews for US RMBS,* Moody's (Nov. 24, 2008).

[584] *See, e.g., Incorporating Third-Party Due Diligence Results Into The U.S. RMBS Rating Process,* S&P (Nov. 25, 2008).

[585] *See* proposed paragraphs (c)(1)(iii) of new Rule 17g–10.

[586] *See, e.g., Criteria for Evaluating Independent Third-Party Loan Level Reviews for US RMBS,* Moody's (Nov. 24, 2008).

[587] *Id.*

[588] *Id.*

[589] *See* proposed paragraphs (c)(1)(iv) of new Rule 17g–10.

in a sampled loan file to verify the loan was made in conformance with, for example, with "truth-in-lending" regulations such as Regulation Z.[590]

The fifth category of "due diligence services"—the catchall—would be identified in proposed paragraph (c)(1)(v) of new Rule 17g–10 as a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the Exchange Act-ABS will pay interest and principal according to its terms and conditions.[591] The Commission preliminarily believes that findings relevant to whether the issuer of the Exchange Act-ABS will pay interest and principal according to its terms and conditions (*i.e.,* not default) would be relevant to determining a credit rating given that the statutory definition of "credit rating" is "an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments." [592] The Commission also preliminarily believes that reviews of the assets underlying an Exchange Act-ABS that are designed to generate findings that would not be relevant to determining a credit rating would be outside the scope of proposed catchall definition and, therefore, outside the scope of Section 15E(s)(4)(B) of the Exchange Act and Rule 17g–10.[593]

Proposed paragraph (c)(2) of new Rule 17g–10 would define the term "issuer" as including a sponsor, as defined in 17 CFR 229.1011, or depositor, as defined in 17 CFR 229.1011, that participates in the issuance of an Exchange Act-ABS.[594] The Commission preliminarily believes this definition is necessary because the requirements of Section 15E(s)(4)(B) of the Exchange Act are triggered, among other things, when third-party due diligence services are employed by an "issuer." [595] The term "issuer" could be interpreted by entities subject to Section 15E(s)(4)(B) of the Exchange Act and new Rule 17g–10 as meaning the legal entity issuing the Exchange Act-ABS. However, the issuer of an Exchange Act-ABS typically is a passive entity such as a statutory trust. Consequently, a sponsor initiates an Exchange Act-ABS transaction by selling or pledging to a specially created issuing entity a group of financial assets that the sponsor either has originated itself or has purchased in the secondary market. In some instances, the transfer of assets is a two-step process: the financial assets are transferred by the sponsor first to an intermediate entity, the depositor, and then the depositor transfers the assets to the issuing entity for the particular transaction. Because the issuer is passive, the sponsor, depositor, or underwriter would be more likely to employ a provider of third-party due diligence services. Consequently, if the term "issuer" were narrowly interpreted to mean the passive entity, the objectives of Section 15E(s)(4)(B) of the Exchange Act potentially could be undermined in that the requirement to make the disclosure would not be triggered.

The Commission is proposing to define the terms "originator" and "securitizer" in proposed paragraphs (c)(3) and (c)(4), respectively, of new Rule 17g–10 because the proposed definition of "due diligence services" in proposed paragraph (c)(1) would use those terms.[596] The Commission preliminarily believes defining these terms would provide greater clarity as to the proposed meaning of "due diligence services." Moreover, Section 941 of the Dodd-Frank Act added new Section 15G of the Exchange Act.[597] Section 15G(a) contains definitions of "originator" and "securitizer" to be used for the purposes of that section.[598] Consequently, there are existing definitions the Commission can utilize for the purposes of new Rule 17g–10. For these reasons, proposed paragraph (c)(3) of new Rule 17g–10 would provide that the term "originator" has the same meaning as in Section 15G of the Exchange Act (15 U.S.C. 78o–9).[599] Similarly, proposed paragraph (c)(4) of new Rule 17g–10 would provide that the term "securitizer" has the same meaning as in Section 15G of the Exchange Act (15 U.S.C. 78o–9).[600]

Request for Comment

The Commission generally requests comment on all aspects of proposed new Rule 17g–10. The Commission also seeks comment on the following:

1. The Commission understands that "provider of third-party due diligence services" is a phrase used as a term of art in the securitization market, and the proposed rules are intended to apply to those entities that are commonly identified by that term. Would the proposed definition of "due diligence services" provide sufficient guidance to those entities providing due diligence services as to when the requirements of the self-executing provision in Section 15E(s)(4)(B) and proposed new Rule 17g–10 would apply? How could the proposal be modified to provide clearer guidance?

2. Should, as proposed, the definition of "due diligence services" apply to Exchange Act-ABS only or should it apply more broadly to structured finance products? If it should apply more broadly, what types of structured finance products that are not Exchange Act-ABS should the definition include within its scope? In addition, are providers of third-party due diligence services used with respect to these types of structured finance products? If so, explain how the results of those services are relevant to the determination of a credit rating?

3. Does the first category of "due diligence service" identified in proposed paragraph (c)(1)(i) of new Rule 17g–10 (*i.e.,* a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the quality or integrity of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?

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[590] *See* 12 CFR 226.1 *et seq.*

[591] *See* proposed paragraphs (c)(1)(v) of new Rule 17g–10.

[592] *See* 15 U.S.C. 78c(60).

[593] *See* 15 U.S.C. 78o–7(s)(4)(B) and proposed new Rule 17g–10.

[594] *See* proposed paragraph (c)(2) of new Rule 17g–10. The Commission interprets the term "issuer" in Section 15G(a)(3)(A) of the Exchange Act to refer to the depositor of an asset-backed security. This treatment is consistent with the Commission's historical regulatory approach to that term, including the Securities Act and the rules promulgated under the Securities Act and the Exchange Act. *See, e.g.,* 17 CFR 230.191 and 17 CFR 240.3b–19.

[595] *See* 15 U.S.C. 78o–7(s)(4)(B).

[596] *See* proposed paragraphs (c)(3) and (c)(4) of new Rule 17g–10; *see also* proposed paragraphs (c)(1)(i) and (iv) using the term "originator" and proposed paragraph (c)(1)(i) using the term "securitizer."

[597] *See* Public Law 111–203 § 941 and 15 U.S.C. 78o–9.

[598] *See* 15 U.S.C. 78o–9(a)(3) and (4).

[599] *See* proposed paragraph (c)(3) of new Rule 17g–10. Section 15G(a)(4) of the Exchange Act defines the term "originator" to mean "a person who—(A) through the extension of credit or otherwise, creates a financial asset that collateralizes and asset-backed security; and (B) sells an asset directly or indirectly to a securitizer." *See* 15 U.S.C. 78o–9(a)(4).

[600] *See* proposed paragraph (c)(4) of new Rule 17g–10. Section 15G(a)(3) of the Exchange Act defines the term "securitizer" to mean: "(A) an issuer of an asset-backed security; or (B) a person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuer." *See* 15 U.S.C. 78o–9(a)(3).

4. Does the second category of "due diligence service" identified in proposed paragraph (c)(1)(ii) of new Rule 17g–10 (*i.e.,* a review of the assets underlying Exchange Act-ABS for the purpose of making findings with respect to whether the origination of the assets conformed to underwriting or credit extension guidelines, standards, criteria or other requirements) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?

5. Does the third category of "due diligence service" identified in paragraph (c)(1)(iii) of new Rule 17g–10 (*i.e.,* a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to the value of collateral securing such assets) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?

6. Does the fourth category of "due diligence service" identified in paragraph (c)(1)(iv) of new Rule 17g–10 (*i.e.,* a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to whether the originator of the assets complied with Federal, state or local laws or regulations) appropriately describe a form of due diligence service for Exchange Act-ABS that is provided to issuers or underwriters by a provider of third-party due diligence services? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition as reflecting activity that is not a third-party due diligence service?

7. Would the catchall component of the definition of "due diligence services" identified in proposed paragraph (c)(1)(v) of new Rule 17g–10 (*i.e.,* a review of the assets underlying an Exchange Act-ABS for the purpose of making findings with respect to any other factor or characteristic of such assets that would be material to the likelihood that the Exchange Act-ABS will pay interest and principal according to its terms and conditions) adequately capture existing or future third-party due diligence services not identified in proposed paragraphs (c)(1)(i) through (iv) of new Rule 17g–10? For example, is this component of the definition too broad or narrow? If so, how should this component of the definition be refined? Alternatively, should it be omitted from the definition?

8. Are there other types of due diligence services for Exchange Act-ABS provided to issuers or underwriters by a provider of third-party due diligence services that are not identified in the Commission's proposed definition that should be included? For example, would the proposed definitions capture third-party due diligence services provided with respect to an Exchange Act-ABS after it has been issued? If proposed definitions would not capture due diligence services provided post-issuance or any other services commonly understood as third-party due diligence services, describe such services and provide suggested rule text for how they could be incorporated into the definition. Also, provide an explanation as to how such services would be relevant to the determination of a credit rating.

9. Would the inclusion of the proposed definition of "issuer" in new Rule 17g–10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed definition be refined?

10. Would the inclusion of the proposed definition of "originator" in new Rule 17g–10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed definition be refined?

11. Would the inclusion of the proposed definition of "securitizer" in new Rule 17g–10 identify the types of entities that should trigger the requirements of the proposed rule? For example, is the proposed definition too broad or narrow? If so, how should the proposed definition be refined?

3. Proposed Form ABS Due Diligence–15E

Section 15E(s)(4)(C) of the Exchange Act specifies that the Commission shall establish the appropriate format and content for the written certifications required under Section 15E(s)(4)(B), to ensure that providers of due diligence services have conducted a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate rating.[601] The Commission is proposing to prescribe the format of the certification in Form ABS Due Diligence–15E.[602] The proposed form would contain five line items identifying information the provider of third-party due diligence services would need to set forth in the form. It also would contain a signature line with a corresponding representation.[603]

Item 1 of proposed Form ABS Due Diligence–15E would elicit the identity and address of the provider of third-party due diligence services.[604] This would notify users of the certification as to which third party conducted the review described in the certification. Item 2 of proposed Form ABS Due Diligence–15E would elicit the identity and address of the issuer, underwriter, or NRSRO that employed the provider of third party due diligence services.[605] This would notify users of the certification as to the person that employed the third-party to conduct the review described in the certification.

Item 3 of proposed Form ABS Due Diligence–15E would instruct the provider of third-party due diligence services to identify each NRSRO whose published criteria for performing due diligence the third party satisfied in performing the due diligence review.[606] As noted above, the NRSROs most active in rating RMBS have incorporated into their procedures and methodologies for determining RMBS credit ratings minimum steps a provider of third party due diligence services must take in conducting due diligence.[607] Consequently, the instructions for Item 3 would provide that if the manner and scope of the due diligence provided by the third party satisfied the criteria for due diligence published by an NRSRO, the third party should identify the NRSRO and the title and date of the published criteria in a table provided on the form.[608] The table and instructions would permit the identification of more

[601] *See* 15 U.S.C. 78o–7(s)(4)(C).

[602] *See* proposed new Rule 17 CFR 249b.400 and proposed Form ABS Due Diligence–15E.

[603] *Id.*

[604] *See* Item 1 to proposed Form ABS Due Diligence–15E.

[605] *See* Item 2 to proposed Form ABS Due Diligence–15E.

[606] *See* Item 3 to proposed Form ABS Due Diligence 15E.

[607] *See, e.g., US RMBS Ratings Criteria,* Fitch (Dec. 3, 2009) *Criteria for Evaluating Independent Third-Party Loan Level Reviews for US RMBS,* Moody's (Nov. 24, 2008) *Incorporating Third-Party Due Diligence Results Into the U.S. RMBS Rating Process,* S&P (Nov. 25, 2008).

[608] *Id.*

than one NRSRO.[609] This would allow the third party to reflect in a single form that it conducted due diligence services in a manner that satisfied the due diligence requirements of multiple NRSROs. As such, Item 3 would be designed to elicit a representation from the provider of the third-party due diligence services that it satisfied a given NRSRO's published due diligence standards.

Items 4 and 5 of proposed Form ABS Due Diligence–15E would require the provider of the third-party due diligence services to describe, respectively: (1) The scope and manner of the due diligence performed; and (2) the findings and conclusions resulting from the review. The instructions for Items 4 and 5 would require the summaries to be provided in attachments to the form, which would be considered part of the form.

As discussed above in Section II.H.1 of this release, the Commission is proposing to implement Section 15E(s)(4)(A) of the Exchange Act by requiring the issuer or underwriter of an Exchange Act-ABS to disclose the findings and conclusions of a provider of third-party due diligence services by furnishing Form ABS–15G on EDGAR pursuant to proposed Rule 15Ga–2.[610] Alternatively, the issuer or underwriter would be permitted to obtain a representation from each NRSRO engaged to determine a credit rating for the Exchange Act-ABS that the NRSRO will publicly disclose the findings and conclusions of the provider of third-party due diligence services in the form that would need to be published pursuant to proposed new paragraph (a)(1) of Rule 17g–7. In addition, as discussed above in Section II.G.3 of this release, proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7 would implement Section 15E(s)(3)(A)(v) of the Exchange Act by requiring an NRSRO to disclose in the form whether and to what extent third-party due diligence services were used by the NRSRO, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party.[611] The Commission preliminarily believes that requiring a provider of third-party due diligence services to summarize in Items 4 and 5 of Form ABS Due Diligence–15E the manner and scope of the due diligence performed and the findings and conclusions resulting from the due diligence would facilitate these other requirements.[612] For example, the NRSRO could use the summaries to make the disclosures in the form generated pursuant to proposed new paragraph (a) of Rule 17g–7. In addition, the Commission preliminarily believes that the disclosures would be useful to investors and other users of credit ratings (as noted above in Section II.G.5, an NRSRO would be required to disclose the certification with the publication of a credit rating pursuant to proposed new paragraph (a)(2) of Rule 17g–7).

To this end, the Commission proposes that Item 4 require the provider of third-party due diligence services to describe the steps taken in performing the due diligence.[613] The instructions would require the third party to provide this description regardless of whether the third party represented in Item 3 of the form that its review satisfied published criteria of an NRSRO. In other words, the third party would not be able to simply rely on a cross-reference to the NRSRO's published criteria to explain the work completed in performing the due diligence. Consequently, the instructions to Item 4 would require the third party to describe the scope and manner of the due diligence services provided in connection with the review of assets that is sufficiently detailed to provide an understanding of the steps taken in performing the review. The instructions further would require that the third party include in the description: (1) The type of assets that were reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the quality or integrity of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines; (6) whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with Federal, state and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review conducted with respect to the assets. In other words, the proposed instructions would parallel the Commission's proposed definition of "due diligence services" in paragraph (c)(1) of proposed new Rule 17g–10.[614]

As discussed above, the information required by the instructions would provide the NRSRO and investors and users of credit ratings of the NRSRO with a description of the nature of the due diligence performed along with the publication of the credit rating and the form that would be required under proposed new paragraph (a)(1) of Rule 17g–7.[615] The information also would allow the NRSRO and users of credit ratings to compare whether the provider of third-party due diligence services, based on its description, appeared to satisfy published criteria of the NRSRO if such a claim was made in Item 3. Finally, if no criteria had been published for the type of Exchange Act-ABS or no claim to satisfying criteria was made in Item 3, the description would be the sole basis of understanding the due diligence performed.

Item 5 of proposed Form ABS Due Diligence–15E would require the provider of third-party due diligence services to summarize the findings and conclusions resulting from the due diligence review.[616] Specifically, the instructions to Item 5 would require the third party to provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2 (*i.e.,* conveyed to the issuer, underwriter, or NRSRO that employed the third party to perform due diligence services). As discussed above, the reasons for proposing the requirement to provide such a summary are the same as for Item 4 of Form ABS Due Diligence–15E.

Finally, the individual executing Form ABS Due Diligence-15E on behalf of a provider of third-party due diligence services would need to make two representations.[617] First, the individual would need to represent that he or she has executed the Form on behalf of, and on the authority of, the third-party. Second, the individual would need to represent that the third-party conducted a thorough review in performing the due diligence described in Item 4 attached to the Form and that the information and statements

[609] *Id.*

[610] 15 U.S.C. 78o–7(s)(4)(A), proposed new Rule 15Ga–2, and proposed amendments to Form ABS–15G.

[611] *See* 15 U.S.C. 78o–7(s)(3)(A)(v) and proposed new paragraph (a)(1)(ii)(F) of Rule 17g–7.

[612] *See* Items 4 and 5 of proposed Form ABS Due Diligence–15E.

[613] *See* Item 4 of proposed Form ABS Due Diligence–15E.

[614] *Compare* Item 4 of proposed Form ABS Due Diligence 15E, *with* paragraph (c)(1) of proposed new Rule 17g–10.

[615] *See* proposed new paragraph (a) of Rule 17g–7.

[616] *See* Item 5 of proposed Form ABS Due Diligence 15E.

[617] *See* "Certification" of proposed Form ABS Due Diligence-15E.

contained in the Form, including Items 4 and 5 attached to the Form, which are part of the Form, are accurate in all significant respects. The Commission is proposing that this representation be made to implement the provision of Section 15E(s)(4)(C) of the Exchange Act, which provides that the Commission shall establish the appropriate format and content of the written certifications "to ensure that providers of due diligence services have conducted a *thorough review* of data, documentation, and other relevant information necessary for [an NRSRO] to provide an accurate rating (emphasis added)."[618]

Request for Comment

The Commission generally requests comment on all aspects of proposed new Form ABS Due Diligence-15E. The Commission also seeks comment on the following:

1. Would the proposed format of proposed Form ABS Due Diligence-15E appropriately achieve the objectives of Section 15E(s)(4)(C) of the Exchange Act? How could the format be modified to better achieve these objectives?

2. Should proposed Form ABS Due Diligence-15E be more prescriptive in terms of the steps a provider of third-party due diligence services would need to take in performing the review? For example, should the form specify the minimum sample size a provider of third-party due diligence services must perform on the assets underlying the Exchange Act-ABS? If so, should the sample size be the same across all asset classes and within asset classes? For example, with respect to RMBS, the scope of due diligence could be based on the type of mortgage loans (prime, Alt-A, or sub-prime), the quality of the originator of the loans, the level of documentation provided with the loans or other characteristics. Moreover, the scope of due diligence required for a CMBS could involve reviewing every pool asset (rather than a sample), since the number of underlying loans is much less than in an RMBS and, therefore, the default of one loan would have a greater impact than the default of a loan underlying an RMBS. Moreover, the scope of due diligence required by an NRSRO for an Exchange Act-ABS where the asset pool composition turns over rapidly because it contains revolving assets, such as credit card receivables or dealer floor-plan receivables, could involve different sampling techniques. How would the Commission account for these variables in prescribing minimum sample sizes or other procedures that would need to be undertaken by a provider of third-party due diligence services? What benefits and costs could result from being more prescriptive? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.

3. Would the information disclosed in Item 3 of proposed new Form ABS Due Diligence-15E identifying each NRSRO whose published criteria were satisfied by the provider of third-party due diligence services be useful to the NRSRO producing a credit rating for the Exchange Act-ABS? If not, how could the proposed instructions for Item 3 be modified to make it more useful to NRSROs? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.

4. Would the summary provided in proposed Item 4 of new Form ABS Due Diligence-15E about the scope and manner of the due diligence services provided in connection with the review of assets be useful to investors, other users of credit ratings, and NRSROs producing a credit rating for the asset-backed security? If not, how could the proposed instructions for Item 4 be modified to make it more useful? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.

5. Would the summary provided in proposed Item 5 of new Form ABS Due Diligence-15E about the findings and conclusions that resulted from the due diligence services be useful to investors, other users of credit ratings, and NRSROs producing a credit rating for the asset-backed security? If not, how could the proposed instructions for Item 5 be modified to make it more useful? Are there practical issues to imposing a more prescriptive approach? If so, describe these issues.

I. Standards of Training, Experience, and Competence

Section 936 of the Dodd-Frank Act provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings: (1) Meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates[619] and (2) is tested for knowledge of the credit rating process.[620] The Commission proposes to implement Section 936 by proposing new Rule 17g–9 and amending Rule 17g–2.[621]

1. Proposed New Rule 17g–9

The Commission proposes to implement Section 936 of the Dodd-Frank through new Rule 17g–9.[622] As proposed, new Rule 17g–9 would have three paragraphs: (a), (b) and (c).[623] Proposed paragraph (a) would contain a requirement that an NRSRO design and administer standards of training, experience, and competence.[624] Proposed paragraph (b) would identify factors an NRSRO would need to consider in designing the standards.[625] Proposed paragraph (c) would prescribe two specific requirements that would need to be incorporated into an NRSRO's standards.[626]

a. Proposed Paragraph (a)

Proposed paragraph (a) of new Rule 17g–9 would require an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered.[627] Consequently, the provision, as proposed, would require the NRSRO to design its own standards.[628] The Commission preliminarily believes this approach would be appropriate because of the varying procedures and methodologies used by NRSROs to determine credit ratings. The proposed requirement would provide flexibility to allow each NRSRO to customize the standards according to its unique procedures and methodologies for determining credit ratings and size. For example, the standards established by an NRSRO with hundreds or thousands of credit analysts that produce tens of thousands of credit ratings across a wide range of asset classes may need to be different than the standards of a small NRSRO with only a handful of credit analysts that focus on a particular class of credit ratings.

At the same time, Section 936(1) provides that the Commission's rules must be reasonably designed to ensure

[618] *See* 15 U.S.C. 78o–7(s)(4)(C).

[619] *See* Public Law 111–203 § 936(1).

[620] *See* Public Law 111–203 § 936(2).

[621] *See* proposed new Rule 17g–9 and proposed new paragraph (b)(15) of Rule 17g–2.

[622] *See* proposed new Rule 17g–9. This rule, if adopted, would be codified at 17 CFR 240.17g–9.

[623] *See* proposed paragraphs (a), (b), and (c) of new Rule 17g–9.

[624] *See* proposed paragraph (a) of new Rule 17g–9.

[625] *See* proposed paragraph (b) of new Rule 17g–9.

[626] *See* proposed paragraph (c) of new Rule 17g–9.

[627] *See* proposed paragraph (a) of new Rule 17g–9.

[628] *Id.*

that any person employed by an NRRSRO to perform credit ratings meets standards of training, experience, and competence *necessary to produce accurate ratings* for the categories of issuers whose securities the person rates.[629] Accordingly, while the Commission preliminarily believes that the rule should allow flexibility in terms of the design of the standards, the Commission also preliminarily believes that to appropriately implement Section 936(1) the rule should require that the standards have a common objective. Therefore, proposed paragraph (a) of new Rule 17g–9 would require that the standards, as established, must be reasonably designed to achieve the objective that individuals employed by the NRSRO to determine credit ratings produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.

This approach of identifying an objective—the production of accurate ratings—and imposing a requirement that the standards be reasonably designed to achieve the objective parallels Sections 15E(g) and (h) of the Exchange Act, among other provisions in the securities laws.[630] For example, Section 15E(g) of the Exchange Act contains a self-executing requirement that each NRSRO shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such NRSRO, to prevent the misuse in violation of the Exchange Act, or the rules or regulations thereunder, of material, nonpublic information by such NRSRO or any person associated with such NRSRO.[631] Similarly, Section 15E(h) contains a self-executing requirement that each NRSRO shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such NRSRO and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.[632]

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (a) of new Rule 17g–9. The Commission also seeks comment on the following:

1. Would the approach in paragraph (a) of new Rule 17g–9 (*i.e.,* identifying an objective for the standards and requiring the NRSRO to design its own standards to achieve that objective) appropriately implement Section 936 of the Dodd-Frank Act, particularly when taken together with the provisions of proposed paragraphs (b) and (c) of new Rule 17g–9 discussed below? If not, should the Commission specifically prescribe the requirements of the standards to establish consistent industry-wide standards? If so, would it be practical to prescribe consistent industry-wide standards applicable to each NRSRO? Commenters who believe such an approach would be feasible and appropriate should identify such a standard and provide suggested rule text.

2. Would the objective identified in proposed paragraph (a) of new Rule 17g–9 (*i.e.,* standards of training, experience, and competence that are reasonably designed to achieve the objective that such credit analysts produce accurate credit ratings) be appropriate? Would it establish an objective that could be achieved? Would it implement the goal of Section 936 of the Dodd-Frank Act? Commenters who believe that the proposed objective is not appropriate should explain why and provide suggested rule text to modify the objective.

3. Is the objective—the production of "accurate credit ratings"—assessable? For example, how should the accuracy of credit ratings be measured?

4. Would it be feasible to establish a testing program that has standardized components to review the adequacy of the standards of training, experience, and competence that an NRSRO maintains, enforces, and documents pursuant to proposed paragraph (a) of new Rule 17g–9? If so, what should the components of that testing program be? What would be the advantages and disadvantages of such a program? Are there comparable testing programs used in other contexts that would be relevant in developing such a program?

b. Proposed Paragraph (b)

While proposed paragraph (a) of new Rule 17g–9 would provide that the NRSRO must design the standards, proposed paragraph (b) would identify factors the NRSRO must consider when designing the standards.[633] The Commission intends the identified factors to provide guidance to NRSROs about the Commission's expectations for the design of the standards of training, experience, and competence. It also is intended to provide benchmarks that Commission examiners could use to evaluate whether a given NRSRO's standards are reasonably designed to meet the objective set forth in proposed paragraph (a).

Proposed paragraph (b) of new Rule 17g–9 would require the NRSRO to consider each factor in the context of the potentially varying roles of the individuals employed by the NRSRO to determine credit ratings. More specifically, the Commission preliminarily believes that the design of the standards must account for different functions and responsibilities of such individuals as well as the different procedures and methodologies they use to determine credit ratings. The Commission is not proposing that the NRSRO design a standard for each individual. Rather, the Commission preliminarily believes that the standards, particularly of a large NRSRO with hundreds or thousands of credit analysts, should account for groups of individuals who are not similarly situated, for example, in terms of years of experience, education level, responsibility, and complexity of the procedures and methodologies they use to determine credit ratings.

The first factor—identified in proposed paragraph (b)(1) of Rule 17g–9—would require the NRSRO, when establishing the standards of training, experience, and competence, to consider if the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated.[634] The Commission intends proposed paragraph (b)(1) to require the NRSRO to consider the fact that qualitative analysis relies, in large part, on identifying and assimilating relevant information about an obligor or issuer and making judgments on how that information impacts the creditworthiness of the obligor or the issuer.

The second factor—identified in proposed paragraph (b)(2) of Rule 17g–9—would require the NRSRO, when establishing the standards of training, experience, and competence, to consider if the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures

[629] *See* Public Law 111–203 § 936(1).

[630] *See* 15 U.S.C. 78o–7(g) and (h).

[631] *See* 15 U.S.C. 78o–7(g).

[632] *See* 15 U.S.C. 78o–7(h).

[633] *See* proposed paragraph (b) of new Rule 17g–9.

[634] *See* proposed paragraph (b)(1) of new Rule 17g–9.

and methodologies.[635] The Commission intends proposed paragraph (b)(2) to require the NRSRO to consider the fact that quantitative analysis relies, in large part, on mathematical techniques and, consequently, credit analysts using quantitative models would need to have relevant technical expertise.

The third factor—identified in proposed paragraph (b)(3) of Rule 17g–9—would require the NRSRO, when establishing the standards of training, experience, and competence, to consider the classes and subclasses of credit ratings for which each individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses.[636] The Commission intends proposed paragraph (b)(3) to require the NRSRO to consider the fact that different types of obligors and issuers have unique characteristics that may be relevant to the creditworthiness of the obligor or the issuer. For example, the knowledge and competence necessary to rate an operating company is different from that necessary to rate an asset-backed security or a municipal security. Moreover, there may be differences within classes of credit ratings. For example, rating an RMBS requires different knowledge than rating a CMBS, and rating a company in the oil industry requires different knowledge than rating a company in the telecommunications industry.

The fourth factor—identified in proposed paragraph (b)(4) of Rule 17g–9—would require the NRSRO to consider, when establishing the standards of training, experience, and competence, the complexity of the obligors, securities, or money market instruments being rated by the individual.[637] The Commission intends proposed paragraph (b)(4) to require the NRSRO to consider the fact that obligors and securities it rates may vary widely in terms of complexity. For example, more experience and competence may be necessary to rate a synthetic CDO as opposed to a typical RMBS or a global financial company as opposed to a community bank.

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (b) of new Rule 17g–9. The Commission also seeks comment on the following:

1. Are there any other factors in addition to, or as an alternative to, the four factors identified in paragraphs (b)(1) through (4) an NRSRO should consider when establishing standards of training, experience, and competence? For example, should the proposed rule require an NRSRO to consider the number of initial credit ratings the individual is expected to participate in determining annually and the number of credit ratings the individual is expected to participate in monitoring annually? If so, how should these factors be taken into consideration? Identify any additional or alternative factors and provide suggested rule text.

2. Should the factor identified in proposed paragraph (b)(1) of Rule 17g–9 (*i.e.,* if the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(1) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.

3. Should the factor identified in proposed paragraph (b)(2) of Rule 17g–9 (*i.e.,* if the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(2) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.

4. Should the factor identified in proposed paragraph (b)(3) of Rule 17g–9 (*i.e.,* the classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(3) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.

5. Should the factor identified in proposed paragraph (b)(4) of Rule 17g–9 (*i.e.,* the complexity of the obligors, securities, or money market instruments being rated by the individuals) be considered when the NRSRO designs its standards of training, experience, and competence for the individuals it employs to determine credit ratings? If not, should proposed paragraph (b)(4) be modified to provide better guidance for designing the standards? If so, how should it be modified? Alternatively, should it be omitted from the rule? If so, explain why.

c. Proposed Paragraph (c)

Proposed paragraph (c) of new Rule 17g–9 would prescribe two requirements that an NRSRO must incorporate into its standards of training, experience, and competence.[638] The first requirement would be prescribed in proposed paragraph (c)(1) of new Rule 17g–9.[639] This paragraph would provide that the standards of training, experience, and competence must include a requirement for periodic testing of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes or subclasses of credit ratings for which the individual participates in determining credit ratings.[640] The Commission is proposing this requirement to implement Section 936(2) of the Dodd-Frank Act, which provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings is tested for knowledge of the credit rating process.[641] The Commission preliminarily believes that the frequency and manner of testing should be established by the NRSRO. For example, the frequency and manner of testing may depend on whether an NRSRO employs a large number of

[635] *See* proposed paragraph (b)(2) of new Rule 17g–9.

[636] *See* proposed paragraph (b)(3) of new Rule 17g–9.

[637] *See* proposed paragraph (b)(4) of new Rule 17g–9.

[638] *See* proposed paragraphs (c)(1) and (2) of new Rule 17g–9.

[639] *See* proposed paragraph (c)(1) of new Rule 17g–9.

[640] *Id.*

[641] *See* Public Law 111–203 § 936(2).

analysts with varying levels of experience to rate a wide range of obligors, securities, and money market instruments. In this case, testing may need to be more frequent, particularly with respect to more junior analysts. On the other hand, an NRSRO that employs few analysts who focus on rating a specific type of obligor, security, or money market instrument may need less frequent testing, particularly if the analysts are experienced. However, the Commission notes that the testing program—as with all aspects of the standards—would need to be reasonably designed to achieve the objective that the credit analysts produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.[642] Consequently, an NRSRO would need to establish a training schedule that is consistent with achieving this objective.

The second requirement would be prescribed in proposed paragraph (c)(2) of new Rule 17g–9.[643] This paragraph would provide that the standards of training, experience, and competence must include a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.[644] The Commission preliminarily believes three years of experience is appropriate because, among other things, being in business as a credit rating agency for three years was a minimum prerequisite to being treated as an NRSRO under the Rating Agency Act of 2006.[645] Specifically, prior to being amended by the Dodd-Frank Act, the first prong of the definition of "nationally recognized statistical rating organization," provided that the entity "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under Section 15E."[646] Moreover, Section 15E(a)(1)(B)(ix) of the Exchange Act requires a credit rating agency applying for registration as an NRSRO to submit certifications from qualified institutional buyers ("QIBs") as specified in Section 15E(a)(1)(C) of the Exchange Act.[647] Sections 15E(a)(1)(C)(i) through (iii) of the Exchange Act provide, among other things, that the applicant must furnish certifications from a minimum of 10 QIBs, including certifications from no less than two QIBs for each category of obligor for which the applicant intends to be registered.[648] Section 15E(a)(1)(C)(iv) provides, among other things, that the certification must state that the entity meets the definition of a QIB and has used the credit ratings of the applicant for at least the three years immediately preceding the date of the certification in the subject category or categories.[649]

The Commission considered these former and current provisions of Section 15E of the Exchange Act in developing the proposed three-year requirement in paragraph (c)(2) of new Rule 17g–9. The Commission preliminarily believes that having at least one person participate in the determination of a credit rating who has at least three years experience in performing credit analysis would establish an appropriate baseline requirement that could be implemented by NRSROs without causing them to hire new staff or re-allocate staff resources. For example, in terms of participating in the credit rating, the Commission preliminarily believes an NRSRO's standard could require that at least one person with at least three years experience serve on a committee that votes to approve the credit rating or that reviews and approves a credit rating action proposed by a junior analyst. Moreover, the Commission notes that performing credit analysis is not synonymous with determining credit ratings. Many financial institutions have credit risk departments staffed by individuals who analyze the creditworthiness of existing and future counterparties and borrowers. The Commission preliminarily intends that this type of work would qualify a credit analyst to meet the three-year requirement in proposed paragraph (c)(2) of new Rule 17g–9. Consequently, if an NRSRO employed an individual who performed credit analysis for a financial institution for more than three years, that individual would qualify for purposes of the proposed "three-year" requirement.

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (c) of new Rule 17g–9. The Commission also seeks comment on the following:

1. Would proposed paragraph (c)(1) of new Rule 17g–9 (which would provide that the standards of training, experience, and competence must include a requirement for periodic testing of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes and subclasses of credit ratings for which the individual is responsible for determining credit ratings) appropriately implement Section 936(2) of the Dodd-Frank Act? If not, how should proposed paragraph (c)(1) be modified to better achieve the objective of Section 936(2)?

2. Should the Commission prescribe the frequency of the periodic testing that would be mandated under proposed paragraph (c)(1) of new Rule 17g–9? For example, should an NRSRO be required to administer testing every six months, every year, every two years?

3. Would proposed paragraph (c)(2) of new Rule 17g–9 (which would provide that the standards of training, experience, and competence must include a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating) be an appropriate measure in terms of implementing Section 936 of the Dodd-Frank Act? If not, how should proposed paragraph (c)(2) be modified to better achieve the objective of Section 936? For example, should the Commission establish a different minimum number of years such as 1 or 2 years experience or 4, 5, 6, 7, or some larger number of years? Alternatively, should this proposal be omitted from the rule? If so, explain why?

2. Proposed Amendment to Rule 17g–2

For the reasons discussed in Section II.A.2 of this release, the Commission preliminarily believes that the standards of training, experience, and competence an NRSRO would be required, among other things, to document pursuant to proposed paragraph (a) of new Rule 17g–9 should be subject to the recordkeeping requirements of Rule

[642] *See* proposed paragraph (a) of new Rule 17g–9.

[643] *See* proposed paragraph (c)(2) of new Rule 17g–9.

[644] *Id.*

[645] *See* Section 3(a)(61)(A) of the Exchange Act, as added by Section 3(a) of the Rating Agency Act of 2006. *See* Public Law 109–291 § 3. Section 932(b) of the Dodd-Frank Act struck subparagraph (A) of Section 3(a)(61) of the Exchange Act and re-designated paragraph (B) as paragraph (A). *See* Public Law 111–203 § 932(b). While the Dodd-Frank Act eliminated the "three-year" prong from the definition of NRSRO, the Commission does not believe this evidences a view that the credit analysts who work for a credit rating agency need not have any experience. In fact, as noted above, Section 936(1) of the Dodd-Frank Act, among other things, provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRRSRO to perform credit ratings meets standards of training, *experience,* and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates. *See* Public Law 111–203 § 936(1).

[646] *Id.*

[647] *See* 15 U.S.C. 78o–7(a)(1)(B)(ix) and 15 U.S.C. 78*o*–7(a)(1)(C).

[648] *See* 15 U.S.C. 78o–7(a)(1)(C)(i)–(iii).

[649] *See* 15 U.S.C. 78o–7(a)(1)(C)(iv).

17g–2.[650] Consequently, the Commission proposes adding new paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence the NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9 as a record that must be retained.[651] As a result, the standards would be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[652]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (b)(15) of Rule 17g–2.

J. Universal Rating Symbols

Section 938(a) of the Dodd-Frank Act provides that the Commission shall require, by rule, each NRSRO to establish, maintain, and enforce written policies and procedures that: (1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; [653] (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating; [654] and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[655] Section 938(b) of the Dodd-Frank Act provides that nothing in Section 938 shall prohibit an NRSRO from using distinct sets of symbols to denote credit ratings for different types of securities or money market instruments.[656]

The Commission proposes to implement Section 938(a) of the Dodd-Frank Act by proposing paragraph (b) of new Rule 17g–8 and by amending Rule 17g–2.[657]

1. Proposed Paragraph (b) of New Rule 17g–8

The Commission preliminarily believes that Section 938(a) of the Dodd-Frank Act is explicit in prescribing the policies and procedures the Commission shall require, by rule, of each NRSRO.[658] Consequently, the Commission proposes that the rule text of proposed paragraph (b) of new Rule 17g–8 mirror the statutory text.

The prefatory text of proposed paragraph (b) of new Rule 17g–8 would provide that an NRSRO must establish, maintain, enforce, and document policies and procedures that are reasonably designed to achieve three objectives, which would be identified in paragraphs (b)(1), (2), and (3).[659] This proposed provision would mirror the prefatory text of Section 938(a) of the Dodd-Frank Act except that the proposed rule text would add the requirement that the NRSRO "document" the policies and procedures.[660] The Commission preliminarily believes it would be appropriate to add a documentation requirement because it would mean that an NRSRO would need to put its policies and procedures into writing. This requirement, coupled with the Commission's proposal discussed next to apply the record retention and production provisions of Rule 17g–2 to the policies and procedures, would be designed to make them more readily available to Commission examiners. In addition, the Commission believes it is a sound practice for any organization to document its policies and procedures to promote better understanding of them among the individuals within the organization and, therefore compliance with such policies and procedures.

Proposed paragraph (b)(1) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.[661] This proposed provision would mirror the text of Section 938(a)(1) of the Dodd-Frank Act.[662] The Commission also notes that Section 15E(s)(3)(B)(ii) of the Exchange Act provides that the Commission's rule requiring an NRSRO to generate a form to disclose information with the publication of a credit rating requires disclosure of information on the content of the credit rating, including: (1) The historical performance of the credit rating; and (2) the expected probability of default and the expected loss in the event of default.[663] As discussed above in Section II.G.3 of this release, the Commission is proposing to implement this requirement in proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.[664] The Commission preliminarily believes proposed paragraph (b)(1) of new Rule 17g–8 would work in conjunction the requirement in proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7 insomuch as the policies and procedures proposed to be required by the former would assist the NRSRO in making the disclosure proposed to be required in the latter.

Proposed paragraph (b)(2) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to clearly define each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO.[665] This proposed provision would implement Section 938(a)(2) of the Dodd-Frank Act.[666] In addition, it would mirror text in the proposed revisions to the Instructions to Exhibit 1 to Form NRSRO as well as work in conjunction with the requirements in those instructions.[667] As discussed above in Section II.E.1.a of this release, the Commission is proposing to amend the Instructions for Exhibit 1. One of the proposed amendments would require the NRSRO to clearly define in Exhibit 1 the meaning of each symbol, number, or score in the rating scale used by the applicant or NRSRO to denote a credit rating category and notches within a category in any Transition/Default Matrix presented in the Exhibit.[668] Consequently, taken together, the proposals would require an NRSRO to have policies and procedures that clearly define the meaning of each

[650] 17 CFR 240.17g–2.

[651] *See* proposed new paragraph (b)(15) to Rule 17g–2; *see also* Section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[652] *See* 17 CFR 240.17g–2.

[653] *See* Public Law 111–203 § 938(a)(1).

[654] *See* Public Law 111–203 § 938(a)(2).

[655] *See* Public Law 111–203 § 938(a)(3).

[656] *See* Public Law 111–203 § 938(b).

[657] *See* proposed paragraph (b) of Rule new 17g–8 and proposed new paragraph (b)(14) of Rule 17g–2. As discussed earlier, the Commission is proposing that rule requirements specifying policies and procedures be consolidated in new Rule 17g–8.

[658] *See* Public Law 111–203 § 936(a).

[659] *See* prefatory text of proposed paragraph (b) of new Rule 17g–8.

[660] *Compare* prefatory text of Public Law 111–203 § 938(a), *with* prefatory text of proposed paragraph (b) of new Rule 17g–8.

[661] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[662] *Compare* text of Public Law 111–203 § 938(a)(1), *with* text of proposed paragraph (b)(1) of new Rule 17g–8.

[663] *See* 15 U.S.C. 78o–7(s)(3)(B)(ii).

[664] *See* proposed new paragraph (a)(1)(ii)(L) of Rule 17g–7.

[665] *See* proposed paragraph (b)(2) of new Rule 17g–8.

[666] *Compare* text of Public Law 111–203 § 938(a)(2), *with* text of proposed paragraph (b)(2) of new Rule 17g–8.

[667] *See* Instructions to Exhibit 1 to Form NRSRO.

[668] *See* proposed amendments to Instructions to Exhibit 1 to Form NRSRO.

symbol, number, or score used by the NRSRO to denote a credit rating and to disclose those meanings in Exhibit 1 where investors and other users of credit ratings can find them.

Proposed paragraph (b)(3) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to apply any symbol, number, or score defined pursuant to paragraph (b)(2) of Rule 17g–8 in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[669] This proposed provision would mirror the text of Section 938(a)(3) of the Dodd-Frank Act, except that the proposed rule text would add the term "obligors."[670] The Commission proposes this addition in order to apply the provisions of proposed paragraph (b)(3) of new Rule 17g–8 to credit ratings of obligors as entities in addition to credit ratings of securities and money market instruments.[671]

Request for Comment

The Commission generally requests comment on all aspects of proposed paragraph (b) of new Rule 17g–8. The Commission also seeks comment on the following:

1. Is proposed paragraph (b)(1) of new Rule 17g–8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument)? If not, what additional detail should the Commission provide in terms of the clarifying the objective?

2. Is proposed paragraph (b)(2) of new Rule 17g–8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to clearly define the meaning of each symbol, number, or score used by the NRSRO to denote a credit rating category and notches within a category in the rating scale for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO? If not, what additional detail should the Commission provide in terms of the clarifying the objectives?

3. Is proposed paragraph (b)(3) of new Rule 17g–8 sufficiently explicit in terms of the objective that the policies and procedures be reasonably designed to apply any symbol, number, or score defined in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used? If not, what additional detail should the Commission provide in terms of the clarifying the objective?

2. Proposed Amendment to Rule 17g–2

For the reasons discussed in Section II.A.2 of this release, the Commission preliminarily believes that the policies and procedures an NRSRO would be required, among other things, to document pursuant to proposed paragraph (b) of new Rule 17g–8 should be subject to the recordkeeping requirements of Rule 17g–2.[672] Consequently, the Commission proposes adding new paragraph (b)(14) to Rule 17g–2 to identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g–8 as a record that must be retained.[673] As a result, the policies and procedures would be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[674]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (b)(14) of Rule 17g–2.

K. Annual Report of Designated Compliance Officer

Section 932(a)(5) of the Dodd-Frank Act amended Section 15E(j) of the Exchange Act to re-designate paragraph (j) as paragraph (j)(1) and to add new paragraphs (j)(2) through (j)(5).[675] Section 15E(j)(1) of the Exchange Act contains a self-executing provision that an NRSRO designate an individual (the "designated compliance officer") responsible for administering the policies and procedures that are required to be established pursuant to Sections 15E(g) and (h) of the Exchange Act,[676] and for compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission under Section 15E of the Exchange Act.[677] Sections 15E(j)(2) through (4) prescribe self-executing requirements with respect to, among other things, the activities, duties, and compensation of the designated compliance officer.[678]

Section 15E(j)(5)(A) of the Exchange Act requires the designated compliance officer to submit to the NRSRO an annual report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO that includes: (1) A description of any material changes to the code of ethics and conflict of interest policies of the NRSRO; and (2) a certification that the report is accurate and complete.[679] Section 15E(j)(5)(B) of the Exchange Act provides that the NRSRO shall file the report required pursuant to Section 15E(j)(5)(A) together with the financial report that is required to be submitted to the Commission under Section 15E of the Exchange Act.[680]

Consequently, Section 15E(j)(5)(B) of the Exchange Act contains a self-executing provision requiring the NRSRO to file the annual report of the designated compliance officer "with the financial report that is required to be submitted to the Commission under this section."[681] The Commission notes that Section 15E(k) of the Exchange Act provides that each NRSRO shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors.[682] The Commission implemented Section 15E(k) by adopting Rule 17g–3.[683] Therefore, under the self-executing provisions in Section 15E(j)(5)(B) of the Exchange Act, an NRSRO must file the

[669] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[670] *Compare* text of Public Law 111–203 § 938(a)(3), *with* text of proposed paragraph (b)(3) of new Rule 17g–8.

[671] *See, e.g.*, the definition of "credit rating" in Section 3(a)(60) of the Exchange Act ("The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments."). 15 U.S.C. 78o–7(a)(60).

[672] 17 CFR 240.17g–2.

[673] *See* proposed new paragraph (b)(14) to Rule 17g–2; *see also* Section 17(a)(1) of the Exchange Act, which requires an NRSRO to make and keep such records, and make and disseminate such reports, as the Commission prescribes by rule as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act. 15 U.S.C. 78q(a)(1).

[674] *See* 17 CFR 240.17g–2.

[675] *See* Public Law 111–203 § 932(a)(5) and 15 U.S.C. 78o–7(j)(1) though (5).

[676] *See* 15 U.S.C 780–7(g) and (h).

[677] *See* 15 U.S.C. 78o–7(j)(1).

[678] *See* 15 U.S.C. 78o–7(j)(1) though (4).

[679] *See* 15 U.S.C. 78o–7(j)(5)(A).

[680] *See* 15 U.S.C. 78o–7(j)(5)(B).

[681] *Id.*

[682] The Dodd-Frank Act replaced the words "furnish to the Commission" with the words "file with the Commission" in Section 15E(k) of the Exchange Act. *See* 15 U.S.C. 78o–7(k).

[683] *See* 17 CFR 240.17g–3; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593 (June 18, 2007).

report of the designated compliance officer with the reports required to be submitted pursuant to Rule 17g–3.[684]

As discussed above in Section II.A.3 of this release, Rule 17g–3 requires an NRSRO to furnish five or, in certain cases, six separate reports not more than 90 days after the end of the NRSRO's fiscal year.[685] In order to further clarify the self-executing requirement in Section 15E(j)(5)(B) of the Exchange Act, the Commission is proposing to amend Rule 17g–3 to identify the annual report of the designated compliance officer as one of the reports that must be filed with the Commission.[686] Specifically, the Commission proposes adding a new paragraph (a)(8) to Rule 17g–3 to identify the report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO required to be filed with the Commission pursuant to Section 15E(j)(5)(B) of the Exchange Act.[687] New paragraph (a)(8) would provide that the report need not be audited. Furthermore, the Commission preliminarily does not intend to prescribe how the report must be certified because Section 15E(j)(5)(A)(ii) of the Exchange Act already provides that the designated compliance officer must certify that the report is accurate and complete.[688]

Request for Comment

The Commission generally requests comment on all aspects of proposed new paragraph (a)(8) of Rule 17g–3. The Commission also seeks comment on the following:

1. Should an NRSRO be required to attach to the annual report a signed statement by a duly authorized person (*e.g.,* the designated compliance officer) stating explicitly that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information contained in the reports? For example, because the designated compliance officer is providing the report to the NRSRO and the NRSRO, in turn, is submitting the report to the Commission, would it be appropriate for the Commission to require an additional certification addressing the submission of the report from the NRSRO to the Commission?

L. Electronic Submission of Form NRSRO and the Rule 17g–3 Annual Reports

An NRSRO currently submits the Form NRSROs required under Rule 17g–1 and the annual reports required under Rule 17g–3 to the Commission in paper form. The Commission proposes amending Rule 17g–1, the Instructions to Form NRSRO, Rule 17g–3, and Regulation S–T to require an NRSRO to use the Commission's EDGAR system to: (1) Electronically file or furnish, as applicable, Form NRSRO and the information and documents contained in Exhibits 1 through 9 of Form NRSRO if the submission is made pursuant to paragraph (e), (f) or (g) of Rule 17g–1 (*i.e.,* an update of registration, an annual certification, or a withdrawal from registration, respectively) [689] and (2) electronically file or furnish, as applicable, the annual reports required by Rule 17g–3.[690]

Under this proposal, however, an applicant or NRSRO would continue to submit in paper format Form NRSROs pursuant to paragraphs (a), (b), (c), and (d) of Rule 17g–1 (initial applications for registration, applications to register for an additional class of credit ratings, supplements to an initial application or application to register for an additional class of credit ratings, and withdrawals of initial applications or applications to register for an additional class of credit ratings, respectively).[691] The Commission preliminarily believes that these materials are appropriately received in paper form because of the iterative nature of the NRSRO application process. For example, an applicant often will have a number of phone conferences and meetings with the Commission staff during the application process to clarify the information submitted in the application. These interactions may result in applicants informally providing additional information relating to the application and informally amending or augmenting information provided in the Form and its Exhibits. The Commission preliminarily believes paper submissions facilitate this type of iterative process.

In terms of requiring the electronic submission of Form NRSROs submitted pursuant to paragraph (e), (f), or (g) of Rule 17g–1, the Commission notes that one of the primary goals of the EDGAR system is to facilitate the rapid dissemination of financial and business information in connection with filings the Commission receives. Although paragraph (i) of Rule 17g–1 currently requires NRSROs to make the public portions of their current Form NRSROs publicly available within 10 business days after submission to the Commission, the Commission believes having all such information available immediately in one location would make the information more easily available and searchable to investors and other users of credit ratings. Further, the Commission believes submissions to the Commission are more valuable to investors and other users of credit ratings if they are available in electronic format and that adding the Form NRSRO submissions to the EDGAR database would provide a more complete picture for the public. The Commission preliminarily believes that, as a result of the proposals, the EDGAR page of the Commission's Internet Web site [692] and the NRSRO page of the Commission's Internet Web site [693] would be a comprehensive source containing most public information submitted to the Commission, as well as other information, related to NRSROs. The Commission preliminarily believes that the electronic submission of Form NRSROs would benefit investors and other users of credit ratings by

[684] *See* 15 U.S.C. 78o–7(j)(5)(B), 15 U.S.C. 78o–7(k), and 17 CFR 240.17g–3.

[685] *See* 17 CFR 240.17g–3(a)(1)–(6). As discussed above in Section II.A.3 of this release, the Commission is proposing that Rule 17g–3 be amended to add a new paragraph (a)(7) to implement Section 15E(c)(3)(B) of the Exchange Act by requiring an NRSRO to file the annual report on the NRSRO's internal control structure with the annual reports. *See* 15 U.S.C. 78o–7(c)(3)(B).

[686] *See* proposed new paragraph (a)(8) of Rule 17g–3.

[687] *Id.*

[688] *See* 15 U.S.C. 78o–7(j)(5)(A)(ii). Paragraph (b) of Rule 17g–3 provides that the NRSRO must attach to the reports required to be submitted pursuant to Rule 17g–3 a signed statement by a duly authorized person that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the information contained in the reports. *See* 17 CFR 240.17g–3(b).

[689] *See* 17 CFR 240.17g–1(e), (f), and (g). The electronic submissions of Form NRSRO and Exhibits 1 through 9 of Form NRSRO would be made available to the public immediately upon filing.

[690] *See* 17 CFR 240.17g–3. An NRSRO is not required to make the Rule 17g–3 annual reports publicly available and the reports would not be available to the public on EDGAR. The information collected pursuant to Rule 17g–3 is, and would continue to be, kept confidential to the extent permitted by the Freedom of Information Act ("FIOA"). *See* 15 U.S.C. 552 *et seq.*

[691] Paragraph (i) of Rule 17g–1 requires an NRSRO to make Form NRSRO and information and documents submitted in Exhibits 1 through 9 publicly available within 10 business days of the Commission order granting an initial application for registration or an application to register for an additional class of credit ratings. 17 CFR 240.17g–1(i). The initial application for registration contains information and documents the NRSRO is not required to make publicly available. This includes Exhibits 10 through 13 to Form NRSRO, disclosure reporting pages to Form NRSRO, and certifications from QIBs under Section 15E(a)(1)(C) of the Exchange Act (15 U.S.C. 780–7(a)(1)(C)).

[692] *http://www.sec.gov/investor/pubs/edgarguide.htm.*

[693] *http://www.sec.gov/divisions/marketreg/ratingagency.htm.*

increasing the efficiency of retrieving and comparing NRSRO public submissions and enabling the investors and other users of credit ratings to access information more quickly. An investor or other user of credit ratings would be able to find and review a Form NRSRO on any computer with an Internet connection by accessing EDGAR data on the Commission's Internet Web site or through a third party.

In addition, while the Rule 17g–3 annual reports would not be made public through the EDGAR system, having these reports and the Form NRSROs available on EDGAR could assist the Commission in its oversight of NRSROs. For example, Commission examiners could retrieve more easily the Form NRSROs and annual reports of a specific NRSRO to prepare for an examination. Moreover, having these records submitted and stored through the EDGAR system (*i.e.,* in a centralized location) would assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper submissions that must be manually processed and stored.

Moreover, the Commission preliminarily believes that the electronic submission of Form NRSRO and Rule 17g–3 annual reports would benefit NRSROs. For example, NRSROs would avoid the uncertainties, delay, and expense related to the manual delivery of paper submissions. Further, NRSROs would benefit from no longer having to submit multiple paper copies of these forms and reports to the Commission.

As with other entities that make submissions through the EDGAR systems, these submissions would be subject to the provisions of Regulation S–T [694] and the EDGAR Filer Manual. Regulation S–T includes detailed rules concerning mandatory and permissive electronic EDGAR submissions. It also provides that requests for confidential treatment must be made in paper form.[695] The EDGAR Filer Manual contains detailed technical specifications concerning EDGAR submissions. The EDGAR Filer Manual also provides technical guidance concerning how to begin making submissions on EDGAR by submitting Form ID to obtain a CIK number [696] and confidential access codes and how to maintain and update company data (*e.g.,* how to change company names and contact information).[697]

One technical specification the EDGAR Filer Manual includes is the electronic "submission type" for each submission made through the EDGAR system. The Commission expects the EDGAR electronic submission types for these documents would be designed to facilitate and expedite the submission and review of these submissions. Consistent with this proposal, the Commission preliminarily intends the EDGAR Filer Manual and the EDGARLink software would provide for two EDGAR electronic submission types: one for the submission of Form NRSRO and one for the submission of the annual reports pursuant to Rule 17g–3. The Commission also preliminarily intends that Form NRSRO would become an electronic, fillable, form and that the Exhibits would be submitted with the Form.

As noted above, an NRSRO is not required to make the Rule 17g–3 annual reports public. Therefore, the Rule 17g–3 annual reports would be submitted through the EDGAR system on a confidential basis and would not be made available to the public to the extent permitted by law. The Commission anticipates that the EDGAR Filer Manual would provide guidance for choosing the correct submission type.

Amendments to Rule 17g–1. To implement the electronic submission through EDGAR of a Form NRSRO submitted to the Commission pursuant to paragraph (e), (f), or (g) of Rule 17g–1, the Commission proposes to amend each of those paragraphs to add a second sentence providing that a Form NRSRO and the information and documents in Exhibits 1 through 9, filed or furnished, as applicable, under the paragraph must be submitted electronically to the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[698] Furthermore, the Commission proposes amending paragraphs (a), (b), (c), and (d) of Rule 17g–1 to provide that an NRSRO should file "two paper copies" of the Form NRSROs filed pursuant to those paragraphs. This would be designed to clarify that these filings should continue to be made in paper. In addition, in the past, some NRSROs have submitted more than two paper copies of their Form NRSRO submissions. The Commission believes that the filing of two paper copies is sufficient.

Amendments to the Instructions to Form NRSRO. To further implement the electronic submission through the EDGAR system of Form NRSROs submitted to the Commission pursuant to paragraphs (e), (f), or (g) of Rule 17g–1, the Commission proposes amending Instruction A.8 to Form NRSRO to distinguish between Form NRSRO submissions under paragraph (a), (b), (c), or (d) of Rule 17g–1 (which would continue to be submitted in paper form) and submissions under paragraphs (e), (f), or (g) of Rule 17g–1 (which would be submitted electronically through the EDGAR system). Currently, Instruction A.8 simply provides the address where a Form NRSRO submitted under paragraph (a), (b), (c), (d), (e), (f), or (g) of Rule 17g–1 must be submitted (*i.e.,* the headquarters of the Commission). The Commission proposes amending Instruction 8.A to add above the address a sentence that would instruct an applicant to submit to the Commission at the address indicated below two paper copies of a Form NRSRO submitted pursuant to paragraph (a), (b), (c), or (d) of Rule 17g–1.[699] The Commission further proposes adding a sentence below the address providing that after registration, an NRSRO must submit Form NRSRO electronically to the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, if the submission is made pursuant to paragraphs (e), (f), or (g) of Rule 17g–1.[700]

Finally, the Commission proposes amending Instruction A.9 to Form NRSRO, which currently provides that a Form NRSRO will be considered furnished to the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form.[701] The Commission proposes amending the instruction to read as follows: "A Form NRSRO will be considered filed with or furnished to, as applicable, the Commission on the date the Commission receives a complete and properly executed Form NRSRO that

[694] For a comprehensive discussion of Regulation S–T and electronic filing, *see* "Electronic Filing and the EDGAR System: A Regulatory Overview," available on the Commission's Internet Web site.

[695] *See* 17 CFR 232.101.

[696] As noted earlier, a CIK number is a ten-digit number uniquely identifying the person submitting the form or report.

[697] In the case of name changes, the changes must be made via the EDGAR filing Internet Web site in advance and the new name would be reflected in the next EDGAR submission. The name on past submissions would not change.

[698] *See* proposed amendments to paragraphs (e), (f), and (g) of Rule 17g–1.

[699] *See* proposed amendments to Instruction A.8 of Form NRSRO.

[700] *Id.*

[701] *See* Instruction A.9 to Form NRSRO.

follows all applicable instructions for the Form, including the instructions in Item A.8 with respect to how a Form NRSRO must be filed with or furnished to the Commission."[702] This instruction would be designed to clarify that a Form NRSRO submitted pursuant to paragraph (e), (f), or (g) of Rule 17g–1 must be submitted electronically.

Proposed Amendments to Rule 17g–3. To implement the electronic submission through the EDGAR system of the Rule 17g–3 annual reports, the Commission proposes adding two new paragraphs to Rule 17g–3: paragraphs (d) and (e).[703] Similar to the proposed amendments to paragraphs (e), (f), and (g) of Rule 17g–1, proposed new paragraph (d) of Rule 17g–3 would provide that the reports required by the rule must be submitted electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[704] In addition, because the Rule 17g–3 annual reports are not required to be made public, the Commission proposes adding new paragraph (e) to Rule 17g–3.[705] Proposed new paragraph (e) would, in the first sentence, instruct an NRSRO that information submitted on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law.[706] Proposed new paragraph (e) of Rule 17g–3 would, in the second sentence, instruct an NRSRO that confidential treatment may be requested by marking each page "Confidential Treatment Requested" and by complying with Commission rules governing confidential treatment.[707]

Proposed Amendments to Regulation S–T. Regulation S–T requires the electronic filing of any amendments and related correspondence and supplemental information pertaining to a document that is the subject of mandated EDGAR submission.[708] The Commission proposes amending Rule 101 of Regulation S–T[709] by adding a new paragraph (a)(1)(xiv).[710] Proposed new paragraph (a)(1)(xiv) would identify the Form NRSROs and the information and documents submitted in Exhibits 1 through 9 of Form NRSRO submitted to the Commission pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted pursuant to Rule 17g–3 as submissions that must be made in electronic format.[711]

The Commission also is proposing an amendment to Rule 201 of Regulation S–T.[712] Rules 201 and 202[713] of Regulation S–T address hardship exemptions from EDGAR filing requirements, and paragraph (b) of Rule 13 of Regulation S–T[714] addresses the related issue of filing date adjustments. Under Rule 201, if an electronic filer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the filer may file a properly legended paper copy[715] of the filing under cover of Form TH no later than one business day after the date on which the filing was made.[716] A filer who files in paper form under the temporary hardship exemption must submit an electronic copy of the filed paper document within six business days of the filing of the paper document.[717]

In addition, an electronic filer may apply for a continuing hardship exemption under Rule 202 if it cannot file all or part of a filing without undue burden or expense.[718] The application must be made at least 10 business days before the due date of the filing. In contrast to the self-executing temporary hardship exemption process, a filer can obtain a continuing hardship exemption only by submitting a written application, upon which the Commission, or the Commission staff pursuant to delegated authority, must then act. Under paragraph (b) of Rule 13 of Regulation S–T, if an electronic filer in good faith attempts to file a document, but the filing is delayed due to technical difficulties beyond the filer's control, the filer may request that the Commission grant an adjustment of the filing date.

The Commission is proposing to make the temporary hardship exemption in Rule 201 unavailable for the submissions of Form NRSRO and the information and documents submitted in Exhibits 1 through 9 of Form NRSRO under paragraph (e), (f), or (g) of Rule 17g–1 and the annual reports required under Rule 17g–3.[719] Specifically, the Commission is proposing to amend paragraph (a) of Rule 201 of Regulation S–T to add this group of submissions to the list of submissions for which the temporary hardship exemption is unavailable.[720] An NRSRO would continue to have the ability to apply for a continuing hardship exemption under Rule 202 if it could not submit all or part of an application without undue burden or expense or for an adjustment of the due date under paragraph (b) of Rule 13 if there were technical difficulties beyond the NRSRO's control.

For the foregoing reasons, the Commission proposes amending Regulation S–T: (1) to provide for the mandatory electronic submission of Form NRSRO and the information and documents contained in Exhibits 1 through 9 of Form NRSRO pursuant to paragraphs (e), (f), or (g) of Rule 17g–1 and the annual reports pursuant to Rule 17g–3;[721] and (2) to amend paragraph (a) of Rule 201 to make the temporary hardship exemption unavailable for submissions of Form NRSROs and the information and documents contained in Exhibits 1 through 9 under paragraphs (e), (f), or (g) of Rule 17g–1 and the annual reports under Rule 17g–3.[722]

Request for Comment

The Commission generally requests comment on all aspects of these proposals to require the electronic submission of Form NRSRO under paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports under Rule 17g–3. The Commission also seeks comment on the following:

1. Should applicants be required to submit Form NRSRO electronically under paragraph (a), (b), (c), or (d) of Rule 17g–1?

2. What would be the impact of making the Form NRSROs required under paragraphs (e), (f), and (g) of Rule

[702] *See* proposed amendments to Instruction A.9 to Form NRSRO.

[703] *See* proposed new paragraphs (d) and (e) of Rule 17g–3.

[704] *See* proposed new paragraph (d) of Rule 17g–3.

[705] *See* proposed new paragraph (e) of Rule 17g–3.

[706] *See* the first sentence of proposed new paragraph (e) of Rule 17g–3.

[707] *See* the second sentence of proposed new paragraph (e) of Rule 17g–3.

[708] *See* 17 CFR 232.101(a)(1).

[709] 17 CFR 232.101(a)(1).

[710] *See* proposed paragraph (a)(1)(xiv) of Rule 101 under Regulation S–T.

[711] Related correspondence and supplemental information are not automatically disseminated publicly through the EDGAR system but are immediately available to the Commission staff.

[712] 17 CFR 232.201

[713] 17 CFR 232.202.

[714] 17 CFR 232.13(b).

[715] *See* 17 CFR 232.201(a).

[716] 17 CFR 239.65, 249.447, 269.10, and 274.404.

[717] *See* 17 CFR 232.201(b).

[718] *See* 17 CFR 232.202(a).

[719] The Commission previously has made unavailable the ability for filers to use the temporary hardship exemption for EDGAR submissions of beneficial ownership reports filed by officers, directors and principal security holders under Section 16(a) of the Exchange Act. *See* Securities Act Release No. 8230 (May 7, 2003), 68 FR 25788 (May 13, 2010).

[720] *See* proposed amendment to paragraph (a) of Rule 201 of Regulation S–T.

[721] *See* proposed new paragraph (a)(1)(xiv) to Rule 101 of Regulation S–T.

[722] *See* proposed amendment to paragraph (a) of Rule 201 of Regulation S–T.

17g–1 and the annual reports required under Rule 17g–3 mandatory electronic submissions? Are there additional burdens or costs that would result from requiring these submissions to be made electronically?

3. Are there any other difficulties and considerations unique to these proposed requirements? If so, what aspect of the proposed requirements would be burdensome? Are there other alternatives that would be less burdensome? Provide specific details and alternative approaches.

4. Should NRSROs be required to submit the financial information in Form NRSRO and the information and documents contained in Exhibits 1 through 9 and the Rule 17g–3 annual reports using the XBRL format? Should NRSROs be required to use eXtensible Markup Language (XML) for EDGAR for non-financial information? Provide detailed information on any difficulties and considerations as well as benefits concerning such requirements.

5. Should the temporary hardship exemption be available for submission of these filings?

M. Other Amendments

The Commission is proposing additional amendments to several of the NRSRO rules in response to amendments the Dodd-Frank Act made to sections of the Exchange Act that authorize or otherwise are relevant to these rules.

1. Changing "Furnish" to "File"

Section 932(a) of the Dodd-Frank Act amended Section 15E of the Exchange Act to replace the word "furnish" with the word "file" in paragraphs (b), (d), (k), and (l).[723] In addition, Section 932(a) of the Dodd-Frank Act amended paragraph (j) of Section 15E of the Exchange to, among other things, add a requirement that an NRSRO "file" a report of the designated compliance officer.[724] The Dodd-Frank Act, however, did not replace the word "furnish" with the word "file" in Section 15E(a) (which governs the submission of initial applications for registration as an NRSRO), Section 15E(e) (which governs the submission of voluntary withdrawals from registration), and Section 17(a)(1) (which provides the Commission with authority to, among other things, require NRSROs to furnish reports).[725] Consistent with the amendments to Section 15E described above, the Commission is proposing to amend Rule 17g–1 and Rule 17g–3 to treat certain of the submissions required in those rules as "filings" rather than "furnishings."[726] The Commission also is proposing to make corresponding amendments to Form NRSRO and the Instructions to Form NRSRO.

The Commission proposes amending paragraphs (a), (b), (c), and (d) of Rule 17g–1 to treat Form NRSROs submitted pursuant to those provisions as "filings" rather than "furnishings."[727] These paragraphs govern the submissions of initial applications for registration as an NRSRO. The Commission notes that the Dodd-Frank Act did not replace the word "furnish" with the word "file" in Section 15E(a) of the Exchange Act, which addresses the submission of initial applications for registration. The Commission, however, preliminarily believes that this was an inadvertent omission. For example, Section 15E(b)(1) refers to information "required to be *filed*" under Section 15E(a)(1)(B)(i) of the Exchange Act (emphasis added).[728] Similarly, Section 15E(d)(1)(B) of the Exchange Act refers to "the date on which an application for registration is *filed* with the Commission" (emphasis added).[729] In addition, the legislative history of Section 932(a) states that "[Title IX, Subtitle C, of the Dodd-Frank Act] requires all references to 'furnish' be replaced with the word 'file' in existing law."[730] For these reasons, the Commission proposes to amend paragraphs (a), (b), (c), and (d) of Rule 17g–1 to treat the submissions pursuant to those paragraphs as "filings."

The Commission proposes amending paragraphs (e) and (f) of Rule 17g–1 to treat Form NRSROs submitted pursuant to those provisions as "filings" rather than "furnishings."[731] As noted above, Section 932(a) of the Dodd-Frank Act amended Section 15E(b) of the Exchange Act to replace the word "furnish" with the word "file."[732] Section 15E(b) of the Exchange Act addresses updating Form NRSRO to keep it current and the submission of the annual certification.[733] Paragraphs (e) and (f) of Rule 17g–1 govern the submission of updated Form NRSROs and annual certifications, respectively.[734] Consequently, the Commission proposes amending these paragraphs to treat the submissions of an updated Form NRSRO and an annual certification, respectively, as "filings" rather than "furnishings."[735]

The Commission is not proposing to amend paragraph (g) of Rule 17g–1 to replace the word "furnish" with the word "file." This paragraph implemented Section 15E(e) of the Exchange Act, which addresses the submission by an NRSRO of a written notice to voluntarily withdraw a registration.[736] The Commission preliminarily believes that it is not necessary to subject a notice of withdrawal of registration to the higher standards of a "filing."

Given the proposed amendments to paragraphs (a), (b), (c), (d), (e), and (f) of Rule 17g–1, the Commission proposes amending paragraphs (h) and (i) of Rule 17g–1 to reflect that a Form NRSRO would be "filed" with the Commission under the proposed amendments to paragraphs (a), (b), (c), (d), (e), and (f) of Rule 17g–1 and "furnished" to the Commission under paragraph (g) of Rule 17g–1.

The Commission is proposing to amend paragraphs (a)(1) through (a)(5) of Rule 17g–3 to treat the reports submitted pursuant to those provisions as "filings" rather than "furnishings."[737] As noted above, Section 932(a) of the Dodd-Frank Act amended Section 15E(k) of the Exchange Act to replace the word "furnish" with the word "file."[738] Section 15E(k) of the Exchange Act provides the Commission with authority to require NRSROs to submit annual financial reports.[739] The Commission adopted paragraphs (a)(1) through (a)(5) of Rule 17g–3 under Section 15E(k).[740] Consequently, the Commission proposes amending Rule 17g–3 to treat the reports identified in paragraphs (a)(1) through (a)(5) as "filings" rather than "furnishings."[741]

[723] *See* Public Law 111–203 § 932(a) and 15 U.S.C. 78o–7(b), (d), (k), and (l).

[724] *See* Public Law 111–203 § 932(a) and 15 U.S.C. 78o–7(j)(5).

[725] *See* 15 U.S.C. 78o–7(e) and 15 U.S.C. 78q(a)(1).

[726] Among other things, an application, report, or document "filed" with the Commission pursuant to the Exchange Act or the rules thereunder is subject to the provisions of Section 18 of the Exchange Act. *See* 15 U.S.C. 78o–7r.

[727] *See* proposed amendments to paragraphs (a), (b), (c), and (d) of Rule 17g–1.

[728] *See* 15 U.S.C. 78o–7(a)(1)(B)(i).

[729] *See* 15 U.S.C. 78o–7(d)(1)(B).

[730] *See Conference Report,* H.R. 4173 (June 29, 2010), p. 872.

[731] *See* proposed amendments to paragraphs (e) and (f) of Rule 17g–1.

[732] *See* Public Law 111–203 § 932(a)(1) and 15 U.S.C. 78o–7(b).

[733] *See* 15 U.S.C. 78o–7(b)(1) and (2).

[734] *See* 17 CFR 240.17g–1(e) and (f).

[735] *See* proposed amendments to paragraphs (e) and (f) of Rule 17g–1.

[736] *See* 15 U.S.C. 78o–7(e) and 17 CFR 240.17g–1(g).

[737] *See* proposed amendments to paragraphs (a)(1) through (5) of Rule 17g–3.

[738] *See* Public Law 111–203 § 932(a)(6) and 15 U.S.C. 78o–7(k).

[739] *See* 15 U.S.C. 78o–7(k).

[740] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593 (June 18, 2007).

[741] *See* 15 U.S.C. 78o–7(k) and proposed amendments to paragraphs (a)(1)–(5) of Rule 17g–3.

In addition, the Commission proposes that the new report on internal controls discussed in Section II.A.3 of this release and the new report of the designated compliance officer discussed in Section II.K of this release be treated as "filings" rather than "furnishings."[742] Section 15E(c)(3)(B) of the Exchange Act provides, among other things, that the Commission shall prescribe rules requiring NRSROs to "submit" to the Commission an internal controls report.[743] In addition, Section 15E(j)(5)(B) of the Exchange Act, "Submission of reports to the Commission," provides that an NRSRO "shall file" the report of the designated compliance officer together with the financial report that is required to be "submitted" to the Commission under Section 15E of the Exchange Act.[744] As discussed in Section II.K of this release, the financial reports are submitted pursuant to Rule 17g–3, which was adopted under Section 15E(k).[745] Moreover, as noted above, the Section 932(a)(6) of the Dodd-Frank Act amended Section 15E(k) of the Exchange Act to replace the word "furnish" with the word "file."[746] Consequently, given the interchangeable use of the word "submit" with the word "file" in Section 15E(j)(5)(B) and the legislative history discussed above, the Commission proposes to treat the new report on internal controls as a "filing."[747] As noted above, Section 15E(j)(5)(B) of the Exchange Act explicitly provides that an NRSRO "shall file" the report of the designated compliance officer.[748] Therefore, the Commission proposes to use the term "file" in proposed new paragraph (a)(8) of Rule 17g–3.[749]

The Commission does not propose to amend paragraph (a)(6) of Rule 17g–3 to treat the report identified in that paragraph as a filing. This paragraph was adopted under Section 17(a)(1) of the Exchange Act.[750] Section 17(a)(1) of the Exchange Act provides that any report an NRSRO "is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission."[751] As noted above, the Dodd-Frank Act did not change this provision to make the report a "filing."

The Commission is proposing to amend Form NRSRO and the Instructions to Form NRSRO to conform the Form and its Instructions to the proposed amendments discussed above.[752] Under the proposed amendments, the Commission would replace the word "furnish" with the word "file" when referring to a Form NRSRO submitted under paragraphs (a), (b), (c), (d), (e), and (f) of Rule 17g–1. In addition, in some cases, the Commission proposes using the term "submit" when referring to a Form NRSRO that may have been submitted prior to enactment of the Dodd-Frank Act when the submission would have been "furnished to" as opposed to "filed with" the Commission. The Commission intends the word "submit" as used in this context to mean the submission was either "furnished" or "filed" depending on the applicable securities laws in effect at the time of the submission.

Request for Comment

The Commission generally requests comment on all aspects of these proposals to replace the word "furnish" with the word "file" in the Commission's NRSRO rules.

2. Amended Definition of NRSRO

As discussed above in Section II.I.1.c of this release, the first prong of the definition of "nationally recognized statistical rating organization" in Section 3(a)(62) of the Exchange Act, prior to being amended by the Dodd-Frank Act, provided that the entity "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under Section 15E."[753] Section 932(b) of the Dodd-Frank Act deleted this prong of the definition.[754] Instruction F.4 to Form NRSRO contains a definition of "NRSRO" that incorporates the Section 3(a)(62) definition as originally enacted. The Commission proposes amending this definition to conform it to the Section 3(a)(62) definition as amended by the Dodd-Frank Act.[755]

Request for Comment

The Commission generally requests comment on all aspects of this proposal to amend the definition of NRSRO in Instruction F.4 to Form NRSRO.

3. Definition of Asset-Backed Security

Several of the Commission's NRSRO rules impose requirements specific to credit ratings for structured finance products by providing that the rules apply to credit ratings with respect to "a security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed-securities transaction."[756] This language mirrors the text of Section 15E(i) of the Exchange Act, which provides the Commission with authority to prohibit an NRSRO from the practice of "lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the [NRSRO]."[757] As noted earlier, with respect to this language, the Commission has provided the following interpretation,

> The term "structured finance product" as used throughout this release refers broadly to any security or money market instrument issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction. This broad category of financial instrument includes, but is not limited to, asset-backed securities such as residential mortgage-backed securities ("RMBS") and to other types of structured debt instruments such as collateralized debt obligations ("CDOs"), including synthetic and hybrid CDOs, or collateralized loan obligations ("CLOs").[758]

Section 941(a) of the Dodd-Frank Act amended Section 3 of the Exchange Act to add paragraph (a)(77), which defines the term "asset-backed security."[759] The Exchange Act definition of "asset-backed security," includes a "collateralized mortgage obligation."[760] Consequently, the Commission preliminarily believes that the current identification of structured finance products in the Commission's rules (*i.e.,* "a security or money market instrument

[742] *See* proposed new paragraphs (a)(7) and (a)(8) of Rule 17g–3.

[743] *See* 15 U.S.C. 78o–7(c)(3)(B).

[744] *See* 15 U.S.C. 78o–7(j)(5)(B).

[745] *See* 15 U.S.C. 78o–7(k) and 17 CFR 240.17g–3; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593 (June 18, 2007).

[746] *See* Public Law 111–203 § 932(a)(6) and 15 U.S.C. 78o–7(k).

[747] *See* proposed new paragraph (a)(7) of Rule 17g–3.

[748] *See* 15 U.S.C. 78o–7(j)(5)(B).

[749] *See* proposed new paragraph (a)(8) of Rule 17g–3.

[750] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6464–65 (Feb. 9, 2009).

[751] *See* 15 U.S.C. 78o–7q(a)(1).

[752] *See* proposed amendments to Form NRSRO and the Instructions to Form NRSRO.

[753] *See* Section 3(a)(62)(A) of the Exchange Act (15 U.S.C. 78c(a)(62)(A) added by the Rating Agency Act of 2006.

[754] *See* Public Law 111–203 § 932(b).

[755] *See* proposed amendment to Instruction F.4 to Form NRSRO.

[756] *See* paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2; paragraph (a)(6) of Rule 17g–3; paragraphs (a)(3) and (b)(9) of Rule 17g–5; and paragraph (a)(4) of Rule 17g–6.

[757] *See* 15 U.S.C. 78o–7(i).

[758] *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63832, footnote 3 (Dec. 4, 2009).

[759] *See* Public Law 111–203 § 941(a) and 15 U.S.C. 78c(a)(77).

[760] *See* 15 U.S.C. 78c(a)(77)(A)(i).

issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction") may have redundant terms insomuch as given the new definition of "asset-backed security" in Section 3(a)(77) of the Exchange Act an "asset-backed securities transaction" would include a "mortgage-backed securities transaction."[761] Accordingly, the Commission is proposing to delete the term "or mortgage-backed" from the identification of structured finance products in these rules.[762] The term "asset-backed security[y]" as used in the proposed new NRSRO rule definition would mean an "asset-backed security" as defined in Section 3(a)(77) of the Exchange Act. The term "security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction" would include an asset-backed security as defined in Section 3(a)(77) of the Exchange Act and other structured finance products relating to asset-backed securities such as synthetic CDOs.

Request for Comment

The Commission generally requests comment on all aspects of these proposals to delete the term "or mortgage-backed" from the identification of structured finance products in the NRSRO rules. The Commission also seeks comment on the following:

1. Would the proposal to delete the term "or mortgage-backed" from the identification of structured finance products in the NRSRO rules change the requirements of these rules in any way? For example, would it exclude certain types of structured finance products that currently are within the scope of these rules by narrowing the definition? Alternatively, would it add certain types of structured finance products that currently are outside the scope of these rules by broadening the definition?

4. Other Amendments to Form NRSRO

The Commission is proposing additional amendments to the Instructions to Form NRSRO to clarify certain requirements because the instructions, as written, have created some confusion among NRSROs.

a. Clarification With Respect to Items 6 and 7

The Commission is proposing amendments to Form NRSRO and the Instructions for Form NRSRO to remove potential ambiguity as to how an applicant and NRSRO must determine the approximate number of credit ratings outstanding for the purposes of Items 6 and 7. In addition, the Commission is seeking comment on how certain types of obligors, securities, and money market instruments should be classified for the purposes of Items 6 and 7.

Item 6 requires a credit rating agency applying to be registered as an NRSRO or an NRSRO applying to be registered in a new class of credit ratings to provide, among other things, the approximate number of credit ratings it has outstanding as of the date of the application in each class of credit ratings for which it is seeking registration.[763] Item 7 requires an NRSRO submitting a Form NRSRO for the purpose of updating information in the Form, making the annual certification, or withdrawing a registration to provide, among other things, the approximate number of credit ratings it had outstanding as of the end of the most recently ended calendar year in each class of credit ratings for which it is registered.[764] As noted earlier, the classes of credit ratings for which an NRSRO can be registered are: (1) financial institutions, brokers, or dealers; [765] (2) insurance companies; [766] (3) corporate issuers; [767] (4) issuers of asset-backed securities (as that term is defined in Section 1101(c) of part 229 of Title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph); [768] and (5) issuers of government securities, municipal securities, or securities issued by a foreign government.[769]

NRSROs have raised questions about how they should count the number of credit ratings outstanding in a given class of credit ratings for the purposes of Form NRSRO.[770] For example, in some classes, certain NRSROs count the number of issuers rated but not the number of securities or money market instruments rated.[771] Other NRSROs count the number of securities or money market instruments rated (but do include the number of rated obligors in the total).[772] Finally, some NRSROs count the number of obligors, securities, and money market instruments rated.[773]

The Commission's intent in Items 6 and 7 is to elicit the total number of obligors, securities, and money market instruments in a given class of credit ratings for which the applicant or NRSRO has assigned a credit rating that was outstanding as of the applicable date (*i.e.,* the date of the application in the case of Item 6 and the date of the most recent calendar year-end in the case of Item 7). Consequently, to make the Commission's expectations more clear, the Commission is proposing to amend the text in Items 6.A and 7.A of Form NRSRO to clarify that an applicant or NRSRO must provide the approximate number of obligors, securities, and money market instruments in each class of credit ratings for which the applicant or NRSRO has an outstanding credit rating.[774] The text in Items 6.A and 7.A currently provides that the applicant or NRSRO must provide the approximate number of credit ratings outstanding. Consequently, the amendment would clarify that the applicant or NRSRO must provide the number of "obligors, securities, and money market instruments" in the given class for which the applicant or NRSRO assigned a credit rating that was outstanding as of the applicable date.

In addition, the Commission is proposing to amend Instruction H to Form NRSRO (as it relates to Items 6.A and 7.A) in four ways. First, in conformity with the proposed amendments to the text of Items 6.A and 7.A in the Form, the Instructions would be amended to provide that the applicant or NRSRO must, for each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the applicant or NRSRO presently has a credit rating outstanding as of the date of the application (Item 6.A) or had a credit rating outstanding as of the most recently ended calendar year (Item 7.A).

Second, Instruction H would be amended to provide that the applicant or NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same

[761] *See* 15 U.S.C. 78c(a)(77)(A).

[762] *See* proposed amendments to paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2; paragraph (a)(6) of Rule 17g–3; paragraphs (a)(3) and (b)(9) of Rule 17g–5; and paragraph (a)(4) of Rule 17g–6.

[763] *See* Item 6 of Form NRSRO and Instructions B, C, D, and H (as it relates to Item 6) to Form NRSRO.

[764] *See* Item 7 of Form NRSRO and Instructions E, F, G, and H (as it relates to Item 7) to Form NRSRO.

[765] *See* 15 U.S.C. 78c(a)(62)(A)(i).

[766] *See* 15 U.S.C. 78c(a)(62)(A)(ii).

[767] *See* 15 U.S.C. 78c(a)(62)(A)(iii).

[768] *See* 15 U.S.C. 78c(a)(62)(A)(iv).

[769] *See* 15 U.S.C. 78c(a)(62)(A)(v).

[770] *See, e.g.,* GAO Report 10–782, pp. 46–47.

[771] *Id.*

[772] *Id.*

[773] *Id.*

[774] *See* proposed amendments to the text in Items 6.A and 7.A respectively.

issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. This proposed instruction would be designed to clarify that each security or money market instrument of an issuer must be included in the count if it is assigned a credit rating by the applicant or NRSRO. For example, if the issuer is in the structured finance class, each tranche of the structured finance product that is assigned a credit rating must be included in the count. In addition, if an issuer issues securities or money market instruments that have different maturities, the applicant or NRSRO must include each such security in the count if the NRSRO assigns a credit rating to the security or money market instrument.

Third, Instruction H would be amended to provide that the applicant or NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating. In other words, the applicant or NRSRO cannot double count an obligor, security, or money market instrument by including it in the totals for two or more classes of credit ratings. For example, some securities have characteristics that could cause an applicant or NRSRO to classify them as municipal securities or structured finance products.[775] Nonetheless, the applicant or NRSRO would need to select the most appropriate class for the security or money market instrument and include it in the count for that class. Because some obligors, securities, and money market instruments have characteristics that could cause them to be assigned more than one class, the Commission is seeking comment below on which class would be the most appropriate for these types of obligors, securities, and money market instruments. Based on the comments received, the Commission may decide to prescribe by rule or identify through guidance how certain types of obligors, securities, and money market instruments should be classified.[776]

Fourth, Instruction H would be amended to provide that the applicant or NRSRO must include in the class of credit ratings described in Section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in Section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. As discussed above in Section II.M.3 of this release, Section 3(a)(62)(B)(iv) contains a narrower definition of "asset-backed security" than the Commission uses for the purposes of its NRSRO rules.[777] In fact, the definition is narrower than the new definition of "asset-backed security" in Section 3(a)77 of the Exchange Act.[778] The Commission expects an applicant and NRSRO to use the broader definition that captures all structured finance products when providing the number of credit ratings outstanding in this class. The proposed amendments to Instruction H to Form NRSRO would be designed to make this expectation more clear.

Request for Comment

The Commission generally requests comment on all aspects of this proposal to amend Form NRSRO Items 6.A and 7.A and Instruction H to Form NRSRO as it relates to Items 6.A and 7.A. The Commission also seeks comment on the following:

1. Would the proposed amendments to Items 6.A and 7.A and Instruction H to Form NRSRO as it relates to Items 6.A and 7.A make the Commission's expectations sufficiently clear in terms of providing the approximate number of credit ratings outstanding in each class for which an applicant is seeking registration and an NRSRO is registered? If not, how could the proposed amendments be modified to provide greater clarity?

2. How should tax-exempt housing bonds be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) Issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

3. How should project finance issuances be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) Corporate issuers identified in Section 3(a)(62)(A)(iii) of the Exchange Act; (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (3) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

4. How should supra-national issuers (*e.g.,* the World Bank) be classified for the purposes of Items 6 and 7? For example, should they be classified as: (1) Financial institutions, brokers, or dealers identified in Section 3(a)(62)(A)(i) of the Exchange Act; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

5. How should covered bonds be classified? For example, should they be classified as: (1) Financial institutions, brokers, or dealers identified in Section 3(a)(62)(A)(i) of the Exchange Act; or (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction? Is there another more appropriate classification?

[775] For example, tax exempt housing bonds share characteristics of both municipal securities and structured finance products.

[776] As noted above in Sections II.E.1 and II.E.2 of this release, the comments also could inform Commission rulemaking or guidance with respect to the performance statistics that would need to be disclosed pursuant to the proposed enhancements to Exhibit 1 to Form NRSRO and the ratings history information that would need to be disclosed pursuant to new paragraph (b) of Rule 17g–7. The goal would be to have consistent disclosures in Items 6 and 7 of Form NRSRO, Exhibit 1 to Form NRSRO, and in the information about credit ratings histories that would be required under proposed new paragraph (b) of Rule 17g–7. The Commission notes other requirements in the securities laws may be triggered based on the type of obligor, security, or money market instrument being rated. *See, e.g.,* 17 CFR 240.17g–5(a)(3) (which applies when an NRSRO issues or maintains a credit rating for a security or money market instrument issued by an asset pool or part of any asset-backed or mortgage-backed securities transaction). The Commission, in eliciting comment, is not suggesting that an obligor, security, or money market instrument having shared characteristics of, for example, a structured finance product and a municipal security, would not be subject to these other requirements because the most appropriate classification for purposes of Items 6 and 7 of Form NRSRO, Exhibit 1 to Form NRSRO, and proposed new paragraph (b) of Rule 17g–7 would be to classify it as a type of obligor, security, or money market instrument not subject to the other requirements.

[777] *Compare* 15 U.S.C. 78c(a)(62)(B)(iv), *with:* Instructions for Exhibit 1 to Form NRSRO; paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2; paragraph (a)(6) of Rule 17g–3; paragraphs (a)(3) and (b)(9) of Rule 17g–5; and paragraph (a)(4) of Rule 17g–6.

[778] *Compare* 15 U.S.C. 78c(a)(62)(B)(iv), *with* 15 U.S.C. 78c(a)(77).

Commenters should provide explanations for their choices.

6. How should municipal structured finance issuers be classified? For example, should they be classified as: (1) Issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

7. How should for-profit health care companies (*e.g.,* hospitals, assisted living facilities, nursing homes) be treated if a municipality issues securities on behalf of the company? For example, should they be classified as: (1) Corporate issuers identified in Section 3(a)(62)(A)(iii) of the Exchange Act; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

8. How should securitizations of health care receivables be classified? For example, should they be classified as: (1) Issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction; or (2) issuers of government securities, municipal securities, or securities issued by a foreign government identified in Section 3(a)(62)(A)(v) of the Exchange Act? Is there another more appropriate classification? Commenters should provide explanations for their choices.

9. How should insurance-linked securities be classified? For example, should they be classified as: (1) Insurance companies identified in Section 3(a)(62)(A)(ii) of the Exchange Act; or (2) issuers of asset-backed securities identified in Section 3(a)(62)(A)(iv) of the Exchange Act as broadened to include any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction? Is there another more appropriate classification? Commenters should provide explanations for their choices.

10. Are there other types of obligors, securities, or money market instruments that share characteristics of one or more classes of credit ratings identified in Section 3(a)(62)(A) of the Exchange Act? If so, identify each such type of obligor, security, or money market instrument, provide a proposed classification, and explain the reason for the proposed classification.

b. Clarification With Respect to Exhibit 8

The Commission proposes to amend Instruction H to Form NRSRO as it relates to Exhibit 8. Exhibit 8 requires an applicant and NRSRO to provide the number of credit analysts it employs and the number of credit analyst supervisors. The Commission is proposing two amendments to the instructions for Exhibit 8. The first amendment would delete a parenthesis in the instructions that provides that the applicant or NRSRO should "see definition below" of the term "credit analyst." There is no such definition. The second amendment would clarify that the applicant or NRSRO, in providing the number of credit analysts, should include the number of credit analyst supervisors. This would be designed to ensure that the disclosures in Form NRSRO are comparable across NRSROs by avoiding the situation in which some NRSROs include credit analyst supervisors in the total number of credit analysts and some NRSROs do not include credit analyst supervisors in that amount.

Request for Comment

The Commission generally requests comment on all aspects of this proposal to amend Instruction H to Form NRSRO as it relates to Exhibit 8.

c. Clarification With Respect to Exhibits 10 through 13

As discussed above, paragraph (i) of Rule 17g–1 requires an NRSRO to make its current Form NRSRO and information and documents submitted in Exhibits 1 through 9 to Form NRSRO publicly available on its Internet Web site, or through another comparable, readily accessible means within 10 business days after the date of the Commission order granting an initial application for registration.[779] An NRSRO is not required to make Exhibits 10 through 13 of Form NRSRO publicly available or update them after registration. Instead, an NRSRO must provide similar information in the annual reports required to be filed with the Commission pursuant to Rule 17g–3.[780] An NRSRO is not required to make the annual reports public. In the past, some NRSRO have submitted the annual reports required by Rule 17g–3 in the form of Exhibits 10 through 13, on a confidential basis, as part of the annual certification. Consequently, the Commission proposes to amend Instruction H in several places to add a "Note" instructing that after registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Rule 17g–1(i) and they should not be updated with the filing of the annual certification. The "Note" would further instruct that similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Rule 17g–3.[781]

Request for Comment

The Commission generally requests comment on all aspects of this proposal to amend Instruction H to Form NRSRO.

III. General Request for Comment

In responding to the specific requests for comment above, the Commission encourages interested persons to provide supporting data and analysis and, when appropriate, suggest modifications to proposed rule text. Responses that are supported by data and analysis provide great assistance to the Commission in considering the practicality and effectiveness of proposed new requirements as well as weighing the benefits and costs of proposed requirements. In addition, commenters are encouraged to identify in their responses a specific request for comment by indicating the section number of the release and question number within that section to which the response is directed (*e.g.,* Section II.E.1.a, Question #15).

The Commission also seeks comment on the proposals as a whole. In this regard, the Commission seeks comment on the following:

1. How would the proposals integrate with provisions in other Titles and Subtitles of the Dodd-Frank Act and any regulations or proposed regulations under those other Titles and Subtitles?

2. How would the proposals integrate with existing requirements applicable to NRSROs in the Exchange Act and the regulations adopted under authority in the Exchange Act?

[779] *See* 17 CFR 240.17g–1.

[780] *See* 17 CFR 240.17g–3; also *compare* Exhibits 10, 11, 12, and 13 to Form NRSRO and Instruction H of Form NRSRO (as it relates to those Exhibits), *with* paragraphs (a) through (5) of Rule 17g–3. 17 CFR 240.17g–3(a)(1)–(5).

[781] *See* "Notes" proposed to be added to Instruction H to Form NRSRO.

3. What should the implementation timeframe be for the proposed amendments and new rules? For example, should the compliance date be 60 days after publication in the **Federal Register**? Alternatively, should the compliance date be 90, 120, 150, 180, or some other number of days after publication? Should the proposed requirements have different time frames before their compliance dates are triggered? For example, would it take longer to come into compliance with certain of these proposals than others? If so, rank the requirements in terms of the length of time it would take to come into compliance with them and propose a schedule of compliance dates.

IV. Paperwork Reduction Act

Certain provisions of the proposed rule amendments and proposed new rules would contain new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[782] The Commission has submitted the proposed rule amendments and proposed new rules to the Office of Management and Budget ("OMB") for review in accordance with the PRA. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number.

The titles for the collections of information are:

(1) Rule 17g–1, Application for registration as a nationally recognized statistical rating organization; Form NRSRO, and Form NRSRO Instructions (OMB Control Number 3235–0625);

(2) Rule 17g–2, Records to be made and retained by nationally recognized statistical rating organizations (OMB Control Number 3235–0628);

(3) Rule 17g–3, Annual financial reports to be furnished by nationally recognized statistical rating organizations[783] (OMB Control Number 3235–0626);

(4) Rule 17g–7, Disclosure requirements (OMB Control Number 3235–0656);

(5) Rule 17g–8, Policies and procedures (a proposed new collection of information);

(6) Rule 17g–9, Standards of training, experience, and competence for credit analysts (a proposed new collection of information);

(7) Rule 17g–10, Certification of providers of third-party due diligence services in connection with asset-backed securities; Form ABS Due Diligence-15E (a proposed new collection of information);

(8) Form ABS–15G (OMB Control Number 3235–0675);

(9) Rule 15Ga–2 (a proposed new collection of information);

(10) Regulation S–T, General Rules and Regulations for Electronic Filing (OMB Control Number 3235–0424); and

(11) Form ID (OMB Control Number 3235–0328).

The proposed amendments to Rule 17g–5 (discussed in Section II.B of this release) and Rule 17g–6 (discussed in Section II.M.3 of this release) do not contain a collection of information requirement within the meaning of the PRA.

A. Summary of Collections of Information Under the Proposed Rules and Rule Amendments

In accordance with the Dodd-Frank Act and to enhance oversight, the Commission is soliciting comment on proposed amendments to existing rules and proposed new rules that would apply to NRSROs, providers of third-party due diligence services for Exchange Act-ABS, and issuers and underwriters of Exchange Act-ABS. The following proposals contain new "collection of information" requirements within the meaning of the PRA.

1. Proposed Amendments to Rule 17g–1

The Commission is proposing to amend Rule 17g–1.[784] First, to implement rulemaking mandated in Section 15E(q)(2)(D) of the Exchange Act, the Commission is proposing to amend paragraph (i) of Rule 17g–1, which requires an NRSRO to make its current Form NRSRO and formation and documents submitted in Exhibits 1 through 9 publicly available on its Internet Web site or through another comparable, readily accessible means within 10 business days of being granted an initial registration or a registration in an additional class of credit ratings, and within 10 business days of furnishing a Form NRSRO to update information on the Form, to provide the annual certification, and to withdraw a registration.[785] The Commission's proposed amendment would require an NRSRO to make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site.[786] The proposed amendment to paragraph (i) also would remove the option for an NRSRO to make its Form NRSRO publicly available "through another comparable, readily accessible means" as an alternative to Web site disclosure.[787] In addition, the Commission is proposing amending paragraph (i) to provide that Exhibit 1 of Form NRSRO (the performance measurement statistics) be made freely available in writing when requested.[788]

Second, the Commission is proposing to amend paragraphs (e), (f), and (g) of Rule 17g–1 to require NRSROs to use the Commission's EDGAR system to electronically submit Form NRSRO and Exhibits 1 through 9 with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[789]

2. Proposed Amendments to Instructions for Exhibit 1 to Form NRSRO

The Commission is proposing to amend the instructions for Exhibit 1 to Form NRSRO.[790] The proposed amendments would be designed to implement rulemaking mandated in Section 15E(q) of the Exchange Act.[791] In particular, the amendments would confine the disclosures in the Exhibit to transition and default rates and certain limited supplemental information.[792] Moreover, the enhancements would standardize the production and presentation of the transition and default rates.[793] Specifically, the amendments would require the transition and default rates in Exhibit 1 to be produced using a "single cohort approach."[794] Under this approach, an applicant and NRSRO, on an annual basis, would be required to compute how the credit ratings assigned to obligors, securities, and money market instruments in a particular class or subclass of credit rating outstanding on the date 1, 3, and 10 years prior to the most recent calendar year-end

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[782] 44 U.S.C. 3501 *et seq.;* 5 CFR 1320.11.

[783] The Commission is proposing to amend the title of Rule 17g–3 to read, "Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations."

[784] 17 CFR 240.17g–1.

[785] *See* 15 U.S.C. 78o–7(q)(2)(D) and proposed amendments to paragraph (i) of Rule 17g–1; *see also* Section II.E.1.b of this release for a more detailed discussion of this proposal.

[786] *See* proposed amendments to paragraph (i) of Rule 17g–1.

[787] *Id.*

[788] *Id.*

[789] *See* proposed amendments to paragraphs (e), (f), and (g) of Rule 17g–1; *see also* Section II.L of this release for a more detailed discussion of these proposals.

[790] *See* Instruction H to Form NRSRO (as it relates to Exhibit 1).

[791] *See* 15 U.S.C. 78o–7(q) and proposed amendments to the instructions for Exhibit 1; *see also* Section II.E.1.a of this release for a more detailed discussion of this proposal.

[792] *See* proposed amendments to the instructions for Exhibit 1.

[793] *Id.*

[794] *Id.*

performed during respective 1, 3, and 10 year time periods.[795]

Under the amendments, the proposed new instructions would be divided into paragraphs (1), (2), (3), and (4), some of which would have subparagraphs.[796] The proposed new paragraphs would contain specific instructions with respect to, among other things, how required information should be presented in the Exhibit (including the order of presentation) and how transition and default rates should be produced using a single cohort approach.[797] As with all information that must be submitted in Form NRSRO and its Exhibits, applicants *and* NRSROs would be subject to these new requirements.[798]

3. Proposed Amendments to Rule 17g–2

The Commission proposes a number of amendments to Rule 17g–2.[799] First, the Commission proposes adding new paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and paragraph (c) of Rule 17g–8 as a record that must be made and retained.[800] Second, the Commission proposes adding new paragraph (b)(12) to Rule 17g–2 to identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[801] Third, the Commission proposes adding new paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g–8 as a record that must be retained.[802] Fourth, the Commission proposes adding new paragraph (b)(14) to Rule 17g–2 to identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g–8 as record that must be retained.[803] Fifth, the Commission proposes adding new paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9 as a record that must be retained.[804]

4. Proposed Amendments to Rule 17g–3

The Commission proposes amending Rule 17g–3.[805] First, the Commission proposes amending paragraphs (a) and (b) of Rule 17g–3 to implement the rulemaking mandated by Section 15E(c)(3)(B) of the Exchange Act.[806] The proposed amendment to paragraph (a) would add a new paragraph (a)(7) to require an NRSRO to include an additional report—the report on the NRSRO's internal control structure—with its annual submission of reports pursuant to Rule 17g–3.[807] Similar to the reports currently identified in paragraphs (a)(2) through (a)(6) of Rule 17g–3, the report identified in new paragraph (a)(7) would be unaudited.[808] The proposed amendment to paragraph (b) of Rule 17g–3 would implement Section 15E(c)(3)(B)(iii) of the Exchange Act, which provides that the annual internal controls report must contain an attestation of the NRSRO's CEO, or equivalent individual.[809] Specifically, the Commission proposes amending paragraph (b) of Rule 17g–3 to require that the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, provide a signed statement that would be attached to the report.[810]

Second, the Commission is proposing that all the annual reports required to be submitted to the Commission pursuant to Rule 17g–3 be submitted through the EDGAR system.[811] To implement this requirement, the Commission proposes, among other amendments, to add new paragraph (d) to Rule 17g–3. Proposed new paragraph (d) would provide that the reports required by the rule must be submitted electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[812]

Third, the Commission is proposing to add a new paragraph (a)(8) to Rule 17g–3 to identify the report of the NRSRO's designated compliance officer that an NRSRO is required to file with the Commission pursuant to Section 15E(j)(5)(B) of the Exchange Act as a report that must be filed with the other annual reports.[813] Section 15E(j)(5)(B) further provides that the NRSRO "shall file" this report with the financial report required to be submitted to the Commission under Section 15E of the Exchange Act (*i.e.,* the Rule 17g–3 annual reports).[814] The Commission's proposal is intended to clarify how an NRSRO must adhere to the self-executing provisions in Section 15E(j)(5)(B) of the Exchange Act. Consequently, the Commission preliminary believes this requirement would not result in a collection of information requirement under the PRA because the requirement to file the report with the other annual reports required under Rule 17g–3 derives exclusively from Section 15E(j)(5)(B) of the Exchange Act (*i.e.,* not from Commission rulemaking).[815] Moreover, the Commission is not proposing to add any additional requirements with respect to the filing other than the proposed requirement that this report and the other annual reports be submitted through the EDGAR system, which is addressed separately in this PRA.[816]

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[795] *Id.*

[796] *See* proposed paragraphs (1)–(4) of the instructions for Exhibit 1.

[797] *Id.*

[798] *See, e.g.,* 17 CFR 240.17g–1; *see also* Instructions A.1, B, C, D, E, and F to Form NRSRO.

[799] 17 CFR 240.17g–2.

[800] *See* proposed new paragraph (a)(9) to Rule 17g–2(a)(9); *see also* Section II.C.2 of this release for a more detailed discussion of this proposal.

[801] *See* proposed new paragraph (b)(12) of Rule 17g–2; *see also* Section II.A.2 of this release for a more detailed discussion of this proposal.

[802] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section II.F.2 of this release for a more detailed discussion of this proposal.

[803] *See* proposed new paragraph (b)(14) to Rule 17g–2; *see also* Section II.J.2 of this release for a more detailed discussion of this proposal.

[804] *See* proposed new paragraph (b)(15) to Rule 17g–2; *see also* Section II.I.2 of this release for a more detailed discussion of this proposal.

[805] 17 CFR 240.17g–3.

[806] *See* 15 U.S.C. 78o–7(c)(3)(B) and proposed new paragraphs (a)(7) and (b)(2) of Rule 17g–3; *see also* Section II.A.3 of this release for a for a more detailed discussion of this proposal.

[807] *See* proposed new paragraph (a)(7) of Rule 17g–3.

[808] *See* 17 CFR 240.17g–3(a)(2)–(6).

[809] 15 U.S.C. 78o–7(c)(3)(B)(iii).

[810] *See* proposed new paragraph (b)(2) of Rule 17g–3.

[811] *See* proposed new paragraph (d) of Rule 17g–3; *see also* Section II.L of this release for a more detailed discussion of this proposal.

[812] *See* proposed new paragraph (d) of Rule 17g–3.

[813] *See* proposed new paragraph (a)(8) of Rule 17g–3; *see also* Section II.K of this release for a more detailed discussion of this proposal.

[814] *See* 15 U.S.C. 78o–7(j)(5)(B). Section 15E(k) of the Exchange Act provides that each NRSRO shall, on a confidential basis, file with the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule may prescribe as necessary or appropriate in the public interest or for the protection of investors. *See* 15 U.S.C. 78o–7(k). The Commission implemented Section 15E(k) by adopting Rule 17g–3. *See* 17 CFR 240.17g–3; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33590–33593 (June 18, 2007).

[815] *See* 15 U.S.C. 78o–7(j)(5)(B).

[816] *Compare* 15 U.S.C. 78o–7(j)(5)(B), *with* proposed new paragraph (a)(8) of Rule 17g–3.

5. Proposed Amendments to Rule 17g–7

The Commission proposes to amend Rule 17g–7.[817] First, the Commission is proposing to add new paragraphs (a)(1) and (2) to Rule 17g–7 to implement rulemaking mandated in Sections 15E(s)(1), (2), (3), and (4)(D) of the Exchange Act.[818] Proposed new paragraphs (a)(1) and (2) of Rule 17g–2 would require, respectively, an NRSRO when taking a rating action to publish a form containing information about the credit rating resulting from or subject to the rating action; and any certification of a provider third-party due diligence services received by the NRSRO that relates to the credit rating.[819] Proposed paragraph (a)(1) of Rule 17g–7 would contain three primary components: paragraph (a)(1)(i) prescribing the format of the form; [820] paragraph (a)(1)(ii) prescribing the content of the form; [821] and paragraph (a)(1)(iii) prescribing an attestation requirement for the form.[822] Proposed paragraph (a)(2) of Rule 17g–7 would identify a certification from a provider of third-party due diligence services as an item that must be published with a rating action.[823]

Second, the Commission is proposing to add new paragraph (b) to Rule 17g–7. This proposed amendment would implement rulemaking mandated in Section 15E(q) of the Exchange Act by: (1) Re-codifying in paragraph (b) of Rule 17g–7 requirements currently contained in paragraph (d)(3) of Rule 17g–2; and (2) substantially enhancing those requirements.[824] More specifically, paragraph (d)(3) of Rule 17g–2 requires an NRSRO to, among other things, make publicly available on its corporate Internet Web site in an XBRL format the information required to be documented pursuant to paragraph (a)(8) of the rule with respect to any credit rating initially determined by the NRSRO on or after June 26, 2007, the effective date of the Rating Agency Act of 2006.[825]

These requirements would be enhanced in four ways. The first enhancement would make the disclosure easier for investors and other users of credit ratings to locate. Specifically, new proposed paragraph (b)(1) of Rule 17g–7 would require the NRSRO, among other things, to publicly disclose the ratings history information for free on an *easily accessible portion* of its corporate Internet Web site.[826]

The second enhancement would broaden the scope of credit ratings subject to the disclosure requirements. Specifically, proposed new paragraph (b)(1)(i) of Rule 17g–7 would require an NRSRO to disclose each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the NRSRO is registered that was *outstanding* as of June 26, 2007 and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.[827] With respect to credit ratings initially determined on or after June 26, 2007, the amendments would clarify that the disclosure of the rating history information would be triggered when an NRSRO publishes any expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating, and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.[828]

The third enhancement would increase the scope of information that must be disclosed about a rating action. Specifically, proposed paragraph (b)(2) of Rule 17g–7 would identify 7 categories of data that would need to be disclosed when a credit rating action is published pursuant to proposed new paragraph (b)(1) of Rule 17g–7.[829] The fourth enhancement would be to require that a rating history not be removed from the disclosure until 20 years after the NRSRO withdraws the credit rating assigned to the obligor, security, or money market instrument.[830]

6. Proposed New Rule 17g–8

The Commission is proposing new Rule 17g–8 that would have paragraphs (a), (b), and (c) (each paragraph would have sub-paragraphs). Proposed paragraph (a) of new Rule 17g–8 would implement rulemaking mandated in Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.[831] In particular, proposed paragraph (a)(1) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or, if the NRSRO does not have a board of directors, a body performing a function similar to that of a board of directors.[832] Proposed paragraph (a)(2) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO.[833] Proposed paragraph (a)(3)(i) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and

[817] 17 CFR 240.17g–7.

[818] *See* 15 U.S.C. 78o–7(s)(1), (2), (3), and (4)(D) and proposed new paragraph (a) of Rule 17g–7; *see also* Sections II.G.1 through G.5 of this release for a more detailed discussion of this proposal.

[819] *See* proposed new paragraphs (a)(1) and (2) of Rule 17g–7.

[820] *See* Section II.G.2 of this release for a detailed discussion of this proposal.

[821] *See* Section II.G.3 of this release for a detailed discussion of this proposal.

[822] *See* Section II.G.4 of this release for a detailed discussion of this proposal.

[823] *See* Section II.G.5 of this release for a detailed discussion of this proposal.

[824] *See* 15 U.S.C. 78o–7(q) and proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[825] 17 CFR 240.17–2(d)(3)(i)(A). Paragraph (a)(8) of Rule 17g–2 requires an NRSRO to make and retain a record that, "for each outstanding credit rating, shows all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key ("CIK") number of the rated obligor." 17 CFR 240.17–2(a)(8).

[826] *See* proposed new paragraph (b)(1) of Rule 17g–7.

[827] *See* proposed new paragraph (b)(1)(i) of Rule 17g–7.

[828] *See* proposed new paragraph (b)(1)(ii) of Rule 17g–7.

[829] *See* proposed new paragraph (b)(2) of Rule 17g–7.

[830] *See* proposed new paragraph (b)(5) of Rule 17g–7.

[831] *See* 15 U.S.C. 78o–7(r) and proposed new paragraph (a) of Rule 17g–8; *see also* Section II.F.1 of this release for a more detailed discussion of this proposal.

[832] *See* proposed paragraph (a)(1) of new Rule 17g–8.

[833] *See* proposed paragraph (a)(2) of new Rule 17g–8.

methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply.[834] Proposed paragraph (a)(3)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[835] Proposed paragraph (a)(4)(i) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings.[836] Proposed paragraph (a)(4)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings.[837] Finally, proposed paragraph (a)(5) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[838]

Proposed paragraph (b) of new Rule 17g–8 would implement rulemaking mandated in Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[839] In particular, proposed paragraph (b)(1) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.[840] Proposed paragraph (b)(2) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to clearly define the meaning of each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO.[841] Proposed paragraph (b)(3) of new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to apply any symbol, number, or score defined pursuant to paragraph (b)(2) of new Rule 17g–8 in a manner that is consistent for all types of obligors, securities and money market instruments for which the symbol, number, or score is used.[842]

Proposed paragraph (c) of new Rule 17g–8 would implement rulemaking mandated in Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to include certain policies and procedures in the policies and procedures the NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act.[843] Specifically, proposed paragraph (c) would require the NRSRO to have policies and procedures to address instances in which a look-back review determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure that the NRSRO will: (1) Immediately place the credit rating on credit watch and disclose certain information about the reason for the rating action; (2) promptly evaluate whether the credit rating must be revised to conform it to the NRSRO's documented procedures and methodologies for determining credit ratings (*i.e.,* remove the influence of the conflict); and (3) promptly publish a revised credit rating, if appropriate, or affirm the credit rating, if appropriate, and, in either case, disclose certain information about the reason for the rating action.[844]

7. Proposed New Rule 17g–9

The Commission is proposing new Rule 17g–9.[845] This proposed rule would implement rulemaking mandated in Section 936 of the Dodd-Frank Act by requiring an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings.[846] Proposed paragraph (a) of new Rule 17g–9 would require an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered.[847] Proposed paragraph (b) would identify four factors the NRSRO must consider when designing the standards.[848] Proposed paragraph (c) would prescribe two requirements an NRSRO must incorporate into its standards of training, experience, and competence.[849]

8. Proposed New Rule 17g–10 and Form ABS Due Diligence–15E

The Commission is proposing new Rule 17g–10 and new Form ABS Due

[834] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8.

[835] *See* proposed paragraph (a)(3)(ii) of new Rule 17g–8.

[836] *See* proposed paragraph (a)(4)(i) of new Rule 17g–8.

[837] *See* proposed paragraph (a)(4)(ii) of new Rule 17g–8.

[838] *See* proposed paragraph (a)(5) of new Rule 17g–8.

[839] *See* Public Law 111–203 § 938(a) and proposed paragraph (b) of new Rule 17g–8; *see also* Section II.J.1 of this release for a more detailed discussion of this proposal.

[840] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[841] *See* proposed paragraph (b)(2) of new Rule 17g–8.

[842] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[843] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g–8; *see also* Section II.C.1 of this release for a more detailed discussion of this proposal.

[844] *See* proposed paragraphs (c)(1), (2) and (3) of new Rule 17g–8.

[845] Proposed new Rule 17g–9 would be codified at 17 CFR 240.17g–9, if adopted.

[846] *See* Public Law 111–203 § 936 and proposed new Rule 17g–9; *see also* Section II.I.1 of this release for a more detailed discussion of this proposal.

[847] *See* proposed paragraph (a) of new Rule 17g–9; *see also* Section II.I.1.a of this release for a more detailed discussion of this proposal.

[848] *See* proposed paragraphs (b)(1)–(4) of new Rule 17g–9; *see also* Section II.I.1.b of this release for a more detailed discussion of this proposal.

[849] *See* proposed paragraphs (c)(1) and (2) of new Rule 17g–9; *see also* Section II.I.1.c of this release for a more detailed discussion of this proposal.

Diligence–15E.[850] The new rule and form would implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act.[851] Proposed new Rule 17g–10 would contain three paragraphs: (a), (b) and (c).[852] Proposed paragraph (a) would provide that the written certifications of providers of third-party due diligence services required pursuant to Section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence–15E.[853] Proposed paragraph (b) of new Rule 17g–10 would provide that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[854] Proposed paragraph (c) of new Rule 17g–10 would contain four definitions to be used for the purposes of Section 15E(s)(4)(B) and Rule 17g–10; namely, a definition of "due diligence services,"[855] "issuer,"[856] "originator,"[857] and "securitizer."[858]

Proposed Form ABS Due Diligence–15E would contain five line items identifying information the provider of third-party due diligence services would need to provide in the form.[859] It also would contain a signature line with a corresponding representation.[860] Item 1 would elicit the identity and address of the provider of third-party due diligence services.[861] Item 2 would elicit the identity and address of the issuer, underwriter, or NRSRO that employed the provider of third-party due diligence services.[862] Item 3 would instruct the provider of third-party due diligence services to identify each NRSRO whose published criteria for performing due diligence the provider of third-party due diligence services satisfied in performing the due diligence review.[863] Item 4 would require the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.[864] Item 5 would require the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.[865]

9. Rule 15Ga–2 and Form ABS–15G

The Commission is proposing new Rule 15Ga–2 and amendments to Form ABS–15G.[866] The new rule and amended form would implement Section 15E(s)(4)(A) of the Exchange Act.[867] Proposed new Rule 15Ga–2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter. The rule would define "due diligence report" as any report containing findings and conclusions relating to "due diligence services" as defined in proposed new Rule 17g–10.[868] Under the proposal, the disclosure would be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. In addition, under the Commission's proposal, an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7.[869]

10. Proposed Amendments to Regulation S–T

The Commission is proposing that certain Form NRSRO submissions and all Rule 17g–3 annual report submissions be submitted to the Commission using the EDGAR system.[870] In order to implement this requirement, the Commission is proposing amendments to Rule 101 of Regulation S–T to require Form NRSROs and Exhibits 1 through 9 submitted pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted pursuant Rule 17g–3 be submitted through the EDGAR system.[871] The Commission also is proposing to amend Rule 201 of Regulation S–T, which governs temporary hardship exemptions from electronic filing, to make this exemption unavailable for NRSRO filings.[872]

The Commission also is proposing amendments to Rule 314 of Regulation S–T to permit municipal securitizers of Exchange Act-ABS, or underwriters in the offering of municipal Exchange Act-ABS, to provide the information required by Form ABS–15G on EMMA, the Municipal Securities Rulemaking Board's centralized public database.[873]

11. Form ID

NRSROs would need to file a Form ID with the Commission in order to gain access to the Commission's EDGAR system to make electronic filings with the Commission.[874]

The Commission preliminarily believes that the issuers and underwriters of Exchange Act-ABS that would need to furnish Form ABS–15G to the Commission through the EDGAR system pursuant to proposed new Rule 15Ga-2 already have access to the EDGAR system because, for example, they need such access for the purpose of Rule 15Ga-1.

B. Proposed Use of Information

1. Proposed Amendments to Rule 17g–1

The Commission proposes amending paragraph (i) of Rule 17g–1 to require

[850] Proposed new Rule 17g–10 would be codified at 17 CFR 240.17g–10 and proposed new Form ABS Due Diligence–15E would be identified at 17 CFR 249b.400.

[851] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C), proposed new Rule 17g–10, and proposed new Form ABS Due Diligence–15E; *see also* Section II.H of this release for a more detailed discussion of this proposal.

[852] *See* proposed paragraphs (a), (b) and (c) of Rule 17g–10; *see also* Section II.H.2 of this release for a more detailed discussion of this proposal.

[853] *See* proposed paragraph (a) of new Rule 17g–10.

[854] *See* proposed paragraph (b) of Rule 17g–10.

[855] *See* proposed paragraph (c)(1) of new Rule 17g–10.

[856] *See* proposed paragraph (c)(2) of new Rule 17g–10.

[857] *See* proposed paragraph (c)(3) of new Rule 17g–10.

[858] *See* proposed paragraph (c)(4) of new Rule 17g–10.

[859] *See* proposed new Form ABS Due Diligence–15E; *see also* Section II.H.3 of this release for a more detailed discussion of this proposal.

[860] *See* proposed new Form ABS Due Diligence–15E.

[861] *See* Item 1 to proposed Form ABS Due Diligence–15E.

[862] *See* Item 2 to proposed Form ABS Due Diligence–15E.

[863] *See* Item 3 to proposed Form ABS Due Diligence–15E.

[864] *See* Item 4 to proposed Form ABS Due Diligence–15E.

[865] *See* Item 5 to proposed Form ABS Due Diligence–15E.

[866] *See* proposed new Rule 15Ga–2 and proposed amendments to Form ABS–15G.

[867] *See* 15 U.S.C. 78o–7(s)(4)(A), proposed new Rule 15Ga–2, and proposed amendments to Form ABS–15G; *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[868] *See* proposed paragraph (c)(1) of new Rule 17g–10.

[869] *See* proposed new paragraph (a)(1) of Rule 17g–7.

[870] *See* proposed amendment of Rule 101 of Regulation S–T (17 CFR 231.101); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[871] *See* proposed new paragraph (a)(xiv) of Rule 101 of Regulation S–T.

[872] *See* proposed amendment to paragraph (a) of Rule 201 of Regulation S–T (17 CFR 231.201); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[873] *See* proposed amendments to Rule 314 of Regulation S–T (17 CFR 231.314); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[874] *See* Section II.L of this release for a more detailed discussion of these proposals.

that an NRSRO make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site.[875] The proposed amendment to paragraph (i) also would remove the option for an NRSRO to make its Form NRSRO publicly available "through another comparable, readily accessible means" as an alternative to Internet disclosure. In addition, the Commission is proposing amending paragraph (i) to provide that Exhibit 1 of Form NRSRO (the performance measurement statistics) be made freely available in writing when requested. Second, the Commission is proposing to amend paragraphs (e), (f), and (g) of Rule 17g–1 to require that NRSROs use the Commission's EDGAR system to electronically file or submit Form NRSRO with the Commission pursuant to these paragraphs in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[876]

The proposed requirements that an NRSRO make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site and file the Form through the EDGAR system are designed to make this information more readily accessible to investors and other users of credit ratings. As the Commission stated when adopting Form NRSRO, the Form will provide users of credit ratings with information that will assist them in comparing NRSROs and understanding how a given NRSRO conducts its business activities.[877] In addition, the filing of the Form NRSROs on the EDGAR system would allow Commission examiners to more easily retrieve the submissions of a specific NRSRO to prepare for an examination. Furthermore, having the Forms filed and stored through the EDGAR system (*i.e.,* in a centralized location), would assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper filings that must be manually processed and stored.

2. Proposed Amendments to Instructions for Exhibit 1 to Form NRSRO

The Commission is proposing to amend the instructions for Exhibit 1 to Form NRSRO.[878] The amendments would confine the disclosures in the Exhibit to transition and default rates and certain limited supplemental information.[879] Moreover, the amendments would standardize the production and presentation of the transition and default rates. As the Commission stated when adopting Form NRSRO, the information provided in Exhibit 1 is an important indicator of the performance of an NRSRO in terms of its ability to assess the creditworthiness of issuers and obligors and, consequently, will be useful to users of credit ratings in evaluating an NRSRO.[880] In addition, Commission staff would use the enhanced performance statistics provided in an applicant's initial application for registration and in an NRSRO's Form NRSRO to, among other things, assess whether the applicant or NRSRO has adequate financial and managerial resources to consistently produce credit ratings with integrity.[881] For example, statistics indicating the applicant or NRSRO is performing poorly in determining credit ratings could be an indication the applicant or NRSRO fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity in a particular class or subclass of credit ratings. Finally, the disclosure of the enhanced performance statistics in an applicant's initial application would allow the Commission staff to verify that the applicant, if granted registration, would publicly disclose the information in accordance with the proposed amendments to the Instructions for Exhibit 1.[882]

3. Proposed Amendments to Rule 17g–2

The Commission proposes adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of new Rule 17g–8 as a record that must be made and retained.[883] In addition, the Commission is proposing to add the following new paragraphs to Rule 17g–2 to identify additional records that must be retained: (1) Paragraph (b)(12) would identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A);[884] (2) paragraph (b)(13) would identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g–8;[885] (3) paragraph (b)(14) would identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g–8;[886] and (4) paragraph (b)(15) would identify the standards of training, experience, and competence an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9.[887]

The proposed requirement that a record of the policies and procedures identified in proposed new paragraph (a)(9) of Rule 17g–2 be made (*i.e.,* documented) would promote better

[875] *See* proposed amendments to paragraph (i) of Rule 17g–1; *see also* Section II.E.1.b of this release for a more detailed discussion of this proposal.

[876] *See* proposed amendments to paragraphs (e), (f), and (g) of Rule 17g–1; *see also* Section II.L of this release for a more detailed discussion of these proposals.

[877] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33569–335670 (June 18, 2007).

[878] *See* Instruction H to Form NRSRO (as it relates to Exhibit 1).

[879] *See* proposed amendments to the instructions for Exhibit 1 to Form NRSRO (17 CFR 249b.300); *see also* Section II. E.1.a of this release for a more detailed discussion of this proposal.

[880] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574 (June 18, 2007); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6474 (Feb. 9, 2009) ("The amendments to the instructions to Exhibit 1 to Form NRSRO will require NRSROs to provide more detailed performance statistics and, thereby, make it easier for users of credit ratings to compare the performance of the NRSROs.").

[881] *See, e.g.,* 15 U.S.C. 78o–7(a)(2)(C) (setting forth grounds to deny an initial application) and 15 U.S.C. 78o–7(d)(1)(E) and (d)(2) (setting forth grounds to sanction an NRSRO, including revoking the NRSRO's registration); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33612 (June 18, 2007) ("Form NRSRO requires that a credit rating agency provide information required under Section 15E(a)(1)(B) of the Exchange Act and certain additional information. The additional information will assist the Commission in making the assessment regarding financial and managerial resources required under Section 15E(a)(2)(C)(2)(ii)(I) of the Exchange Act.").

[882] As indicated above, paragraph (i) requires an NRSRO to make Form NRSRO and Exhibits 1 through 9 publicly available within 10 business days of being granted an initial registration. *See* 17 CFR 240.17g–1(i). In addition, the public disclosure of Form NRSRO and Exhibits 1 through 9 could be accelerated if the Commission adopts the proposal that this information be filed through the EDGAR system upon registration.

[883] *See* proposed new paragraph (a)(9) to Rule 17g–2(a)(9); *see also* Section II.C.2 of this release for a more detailed discussion of this proposal.

[884] *See* proposed new paragraph (b)(12) of Rule 17g–2; *see also* Section II.A.2 of this release for a more detailed discussion of this proposal.

[885] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section II.F.2 of this release for a more detailed discussion of this proposal.

[886] *See* proposed new paragraph (b)(14) to Rule 17g–2; *see also* Section II.J.2 of this release for a more detailed discussion of this proposal.

[887] *See* proposed new paragraph (b)(15) to Rule 17g–2; *see also* Section II.I.2 of this release for a more detailed discussion of this proposal.

understanding of them among the individuals within the organization and, therefore, promote compliance with such policies and procedures. The requirement that the policies and procedures identified in proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) be retained would subject these records to the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g–2.[888] The Commission staff would use these records to review whether an NRSRO was complying with the provisions of the securities laws requiring the NRSRO to establish, maintain, enforce, and document these policies, procedures, and standards.[889]

4. Proposed Amendments to Rule 17g–3

The Commission proposes amending paragraphs (a) and (b) of Rule 17g–3 to implement the rulemaking mandated by Section 15E(c)(3)(B) of the Exchange Act.[890] The proposed amendment to paragraph (a) would add a new paragraph (a)(7) to require an NRSRO to include an additional report—a report on the NRSRO's internal control structure—with its annual submission of reports pursuant to Rule 17g–3. The proposed amendment to paragraph (b) of Rule 17g–3 would require that the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, provide a signed statement that would be attached to the report. The Commission staff would use this report along with the other Rule 17g–3 annual reports to monitor the NRSRO's compliance with applicable securities laws.[891] For example, Section 15E(c)(3)(A) of the Exchange Act requires an NRSRO to "establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings." [892] Among other things, the annual report that an NRSRO would file pursuant to proposed new paragraph (a)(7) of Rule 17g–3 would require the NRSRO to provide an assessment by management of the effectiveness of the internal control structure. Consequently, Commission staff could use the report as a starting point to assess whether the NRSRO is complying with Section 15E(c)(3)(A) of the Exchange Act.[893]

The Commission also is proposing that all the annual reports required to be submitted to the Commission pursuant to Rule 17g–3 be submitted through the EDGAR system.[894] The submission of the annual reports through the EDGAR system would allow Commission examiners to more easily retrieve the reports of a specific NRSRO to prepare for an examination. Moreover, having these reports submitted and stored through the EDGAR system (*i.e.,* in a centralized location), would assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper submissions that must be manually processed and stored.

5. Proposed Amendments to Rule 17g–7

The Commission proposes to amend Rule 17g–7.[895] First, the Commission is proposing to add new paragraphs (a)(1) and (2) to Rule 17g–7 to implement rulemaking mandated in Sections 15E(s)(1), (2), (3), and (4)(D) of the Exchange Act.[896] Proposed new paragraphs (a)(1) and (2) of Rule 17g–2 would require, respectively, an NRSRO when taking a rating action to publish a form containing information about the credit rating resulting from or subject to the rating action; and any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[897] As stated in Section 15E(s)(1)(B) of the Exchange Act, the purpose of the disclosures required in the form would be to provide information that can be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO.[898] Furthermore, as stated in Section 15E(s)(4)(D) of the Exchange Act, the purpose of the disclosure of the certification would be to allow the public to determine the adequacy and level of due diligence services provided by a third-party.[899]

Second, the Commission is proposing to add new paragraph (b) to Rule 17g–7.[900] The proposed amendments would: (1) Re-codify in paragraph (b) of Rule 17g–7 requirements currently contained in paragraph (d)(3) of Rule 17g–2; and (2) substantially enhance those requirements. Under the current and proposed enhanced requirements, an NRSRO is (and would be) required to disclose certain historical information about its credit ratings. As the Commission stated when adopting the current disclosure requirement, the "intent of the rule is to facilitate comparisons of credit rating accuracy across all NRSROs—including direct comparisons of different NRSROs' treatment of the same obligor or instrument—in order to enhance NRSRO accountability, transparency, and competition." [901] The proposals also

[888] *See* 17 CFR 240.17g–2(c), (d), (e) and (f). Paragraph (c) of Rule 17g–2 requires an NRSRO to retain the records identified in paragraphs (a) and (b) for three years after the date the record is made or received. 17 CFR 240.17g–2(c). Paragraph (d) requires, among other things, that an NRSRO maintain each record required to be retained pursuant to paragraphs (a) and (b) in a manner that makes the original record or copy easily accessible to the principal office of the NRSRO. 17 CFR 240.17g–2(d). Paragraph (e) sets forth the requirements that apply when an NRSRO uses a third-party custodian to maintain its records. 17 CFR 240.17g–2(e). Paragraph (f) requires an NRSRO to promptly furnish the Commission with legible, complete, and current copies, and, if specifically requested, English translations, of those records of the NRSRO required to be retained pursuant to paragraphs (a) and (b), or any other records of the NRSRO subject to examination under Section 17(b) of the Exchange Act. *See* 17 CFR 240.17g–2(f); *see also* 15 U.S.C. 78q(b).

[889] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007) ("The Commission designed [Rule 17g–2] based on its experience with recordkeeping rules for other regulated entities. These other books and records rules have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws. Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act and the rules thereunder.") (footnotes omitted).

[890] *See* proposed new paragraphs (a)(7) and (b)(2) of Rule 17g–3; *see also* Section II.A.3 of this release for a for a more detailed discussion of this proposal.

[891] *See, e.g., Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33612–33613 (June 18, 2007) ("[Rule 17g–3] will aid the Commission in monitoring whether the initiation of a proceeding under Section 15E(d) of the Exchange Act will be appropriate because the NRSRO 'fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity. In addition, the financial reports also will assist the Commission in monitoring potential conflicts of interest of a financial nature arising from the operation of an NRSRO.") (footnotes omitted); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465 (Feb. 9, 2009) ("[The amendment to Rule 17g–3] will assist the Commission in its examination function of NRSROs.").

[892] 15 U.S.C. 78o–7(c)(3)(A).

[893] *Id.*

[894] *See* proposed new paragraph (d) of Rule 17g–3; *see also* Section II.L of this release for a more detailed discussion of this proposal.

[895] 17 CFR 240.17g–7.

[896] *See* 15 U.S.C. 78o–7(s)(1), (2), (3), and (4)(D) and proposed new paragraph (a) of Rule 17g–7; *see also* Sections II.G.1 through G.5 of this release for a more detailed discussion of this proposal.

[897] *See* proposed new paragraphs (a)(1) and (2) of Rule 17g–7.

[898] *See* 15 U.S.C. 78o–7(s)(1)(B).

[899] *See* 15 U.S.C. 78o–7(s)(4)(D).

[900] *See* proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[901] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR

are designed to provide persons with the "raw data" necessary to generate statistical information about the performance of each NRSRO's credit ratings.[902] Finally, the proposals are designed to implement provisions of Section 15E(q)(2) of the Exchange Act, which provides, among other things, that the Commission's rules shall require NRSROs to disclose information about the performance of credit ratings that is comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs.[903]

6. Proposed New Rule 17g–8

The Commission is proposing new Rule 17g–8 that would have paragraphs (a), (b), and (c) (each paragraph would have sub-paragraphs). Paragraph (a) of new Rule 17g–8 would implement Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.[904] These policies and procedures would be used by the NRSRO to achieve the objectives identified in Section 15E(r) of the Exchange Act,[905] namely, that the NRSRO:

- determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are approved by the board of the NRSRO, or a body performing a function similar to that of a board;[906]
- determines credit ratings using procedures and methodologies, including qualitative and quantitative data and models, that are in accordance with the policies and procedures of the NRSRO for the development and modification of credit rating procedures and methodologies; [907]
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), applies the changes consistently to all credit ratings to which the changed procedures and methodologies apply; [908]
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), to the extent that changes are made to credit rating surveillance procedures and methodologies, applies the changes to then-current credit ratings within a reasonable time period determined by the Commission, by rule; [909]
- when material changes are made to credit rating procedures and methodologies (including changes to qualitative and quantitative data and models), the NRSRO publicly discloses the reason for the change; [910]
- notifies users of credit ratings of the version of a procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[911]
- notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input;) [912]
- notifies users of credit ratings when a significant error is identified in a procedure or methodology, including a qualitative or quantitative model, that may result in credit rating actions; [913] and
- notifies users of credit ratings when a material change is made to a procedure or methodology, including to a qualitative model or quantitative input, of the likelihood the change will result in a change in current credit ratings.[914]

Proposed paragraph (b) of new Rule 17g–8 would implement Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[915] These policies and procedures would be used by the NRSRO to achieve the objectives mandated in Sections 938(a)(1) through (3) of the Dodd-Frank Act.[916] Namely, that the NRSRO establishes, maintains, and enforces written policies and procedures to: (1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; [917] (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating; [918] and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[919]

Proposed paragraph (c) of new Rule 17g–8 would implement Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to include certain policies and procedures in the policies and procedures the NRSRO is required to establish, maintain, and enforce under Section 15E(h)(4)(A) of the Exchange Act.[920] These policies and procedures would be used by the NRSRO: (1) To achieve the objective specified in Section 15E(h)(4)(A)(ii) of the Exchange Act to revise a credit rating, if appropriate, when a look-back review determines the credit rating was influenced by the conflict of interest of the credit analyst seeking employment with the person subject to the credit rating or the issuer, underwriter, or sponsor of a security or money market instrument subject to the credit rating; [921] and (2) to make the disclosures that would be required in proposed new paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7.[922]

at 63838 (Dec. 4, 2009) ("Ratings history information for outstanding credit ratings is the most direct means of comparing the performance of two or more NRSROs. It allows an investor or other user of credit ratings to compare how all NRSROs that maintain a credit rating for a particular obligor or instrument initially rated that obligor or instrument and, thereafter, how and when they adjusted their credit rating over time."). The Commission notes that under the proposals the disclosures would not contain complete histories for many credit ratings because the NRSRO would not need to include information about rating actions taken before June 26, 2007. However, the Commission believes that the disclosures would still be used to compare how different NRSROs rated a particular obligor, security, or money market instrument beginning as of June 26, 2007 and from that date forward.

[902] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63838 (Dec. 4, 2009) ("The raw data to be provided by NRSROs pursuant to the new ratings history disclosure requirements…will enable market participants to develop performance measurement statistics that would supplement those required to be published by NRSROs themselves in Exhibit 1, tapping into the expertise of credit market observers and participants in order to create better and more useful means to compare the credit ratings performance of NRSROs.").

[903] *See* 15 U.S.C. 78o–7(q)(2).

[904] *See* 15 U.S.C. 78o–7(r) and proposed new paragraph (a) of Rule 17g–8; *see also* Section II.F.1 of this release for a more detailed discussion of this proposal.

[905] *See* 15 U.S.C. 78o–7(r)(1)–(3).

[906] *See* 15 U.S.C. 78o–7(r)(1)(A).

[907] *See* 15 U.S.C. 78o–7(r)(1)(B).

[908] *See* 15 U.S.C. 78o–7(r)(2)(A).

[909] 15 U.S.C. 78o–7(r)(2)(B).

[910] *See* 15 U.S.C. 78o–7(r)(2)(C).

[911] 15 U.S.C. 78o–7(r)(3)(A).

[912] *See* 15 U.S.C. 78o–7(r)(3)(B).

[913] *See* 15 U.S.C. 78o–7(r)(3)(C).

[914] *See* 15 U.S.C. 78o–7(r)(3)(D).

[915] *See* Public Law 111–203 § 938(a) and proposed paragraph (b) of new Rule 17g–8; *see also* Section II.J.1 of this release for a more detailed discussion of this proposal.

[916] *See* Public Law 111–203 §§ 938(a)(1)–(3).

[917] *See* Public Law 111–203 § 938(a)(1).

[918] *See* Public Law 111–203 § 938(a)(2).

[919] *See* Public Law 111–203 § 938(a)(3).

[920] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g–8; *see also* Section II.C.1 of this release for a more detailed discussion of this proposal.

[921] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii).

[922] *See* proposed paragraph (a)(1)(ii)(J)(*3*) of Rule 17g–7.

7. Proposed New Rule 17g–9

The Commission is proposing new Rule 17g–9.[923] This rule would implement Section 936 of the Dodd-Frank Act by requiring an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings.[924] These standards would be used by the NRSRO to achieve the objectives specified in Sections 936(1) and (2) of the Dodd-Frank Act that any person employed by the NRSRO to perform credit ratings produces accurate ratings for the categories of issuers whose securities the person rates and is tested for knowledge of the credit rating process.[925]

8. Proposed New Rule 17g–10 and Form ABS Due Diligence–15E

The Commission is proposing new Rule 17g–10 and new Form ABS Due Diligence–15E.[926] Proposed new Rule 17g–10 would implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act by requiring that the written certification a provider of third-party due diligence services must provide to an NRSRO be made on Form ABS Due Diligence-15E.[927] Proposed new Rule 17g–10 and proposed new Form ABS Due Diligence-15E would be designed to achieve the objective stated in Section 15E(s)(4)(B) of the Exchange Act; namely, that the provider of third-party due diligence services conducts a thorough review of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate credit rating.[928] They also would be designed—in combination with the disclosure requirement in proposed new paragraph (a)(2) of Rule 17g–7—to achieve the objective stated in Section 15E(s)(4)(D) of the Exchange Act; namely, to allow the public to determine the adequacy and level of due diligence services provided by a third party.[929]

9. Rule 15Ga–2 and Form ABS–15G

The Commission is proposing new Rule 15Ga–2 and amendments to Form ABS–15G.[930] The new rule and amended form would implement Section 15E(s)(4)(A) of the Exchange Act.[931] Proposed new Rule 15Ga–2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter. Under the proposal, the disclosure would be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. In addition, under the Commission's proposal, an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7.

The information proposed to be disclosed under these requirements would be used by investors and other users of credit ratings to determine the adequacy and level of due diligence services provided by a third party. In addition, if no disclosure is made, investors and other users of credit ratings would be put on notice that the issuer or underwriter did not employ a provider of third-party due diligence services in connection with the offering of an Exchange Act-ABS.

10. Proposed Amendments to Regulation S–T

As noted above, the Commission is proposing that certain Form NRSRO submissions and all Rule 17g–3 annual report submissions be made through the EDGAR system. In order to implement this requirement, the Commission is proposing amendments to Rule 101 of Regulation S–T to require that the EDGAR system be used to submit Form NRSRO pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports pursuant Rule 17g–3.[932] The Commission also is proposing to amend Rule 201 of Regulation S–T, which governs temporary hardship exemptions from electronic filings, to make this exemption unavailable for NRSRO submissions.[933]

These proposed requirements would implement the proposals that NRSROs use the EDGAR system to submit Form NRSROs pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports pursuant to Rule 17g–3. With respect to the Form NRSROs, the proposal is designed to make the information contained in the Form more readily accessible to investors and other users of credit ratings. As the Commission stated when adopting Form NRSRO, the Form will provide users of credit ratings with information that will assist them in comparing NRSROs and understanding how a given NRSRO conducts its business activities.[934] In addition, the filing of the Form NRSROs and annual reports on the EDGAR system would allow Commission examiners to more easily retrieve the Forms of a specific NRSRO to prepare for an examination. Moreover, having the Forms and annual reports filed and stored through the EDGAR system (*i.e.,* in a centralized location), would assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper filings that must be manually processed and stored.

The Commission also is proposing amendments to Rule 314 of Regulation S–T that would permit municipal securitizers of Exchange Act-ABS, or underwriters in the offering of municipal Exchange Act-ABS, to provide the information required by Form ABS–15G on EMMA, the Municipal Securities Rulemaking Board's centralized public database.[935] This would allow investors and other market participants to access the information required in Form ABS–15G

[923] Proposed new Rule 17g–9 would be codified at 17 CFR 240.17g–9, if adopted.

[924] *See* Public Law 111–203 § 936 and proposed new Rule 17g–9; *see also* Section II.I.1 of this release for a more detailed discussion of this proposal.

[925] Public Law 111–203 §§ 936(1) and (2).

[926] Proposed new Rule 17g–10 would be codified at 17 CFR 240.17g–10 and proposed new Form ABS Due Diligence–15E would be identified at 17 CFR 249b.400.

[927] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C), proposed new Rule 17g–10, and proposed new Form ABS Due Diligence-15E; *see also* Sections II.H of this release for a more detailed discussion of this proposal.

[928] *See* 15 U.S.C. 78o–7(s)(4)(B).

[929] *See* 15 U.S.C. 78o–7(s)(4)(D); *see also* Sections II.G.5 of this release for a more detailed discussion of proposed new paragraph (a)(2) of Rule 17g–7.

[930] *See* proposed new Rule 15Ga–2 and proposed amendments to Form ABS–15G.

[931] *See* 15 U.S.C. 78o–7(s)(4)(A); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[932] *See* proposed amendment of Rule 101 of Regulation S–T (17 CFR 231.101); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[933] *See* proposed amendment of Rule 201 of Regulation S–T (17 CFR 231.201); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[934] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33569–335670 (June 18, 2007).

[935] *See* proposed amendments to Rule 314 of Regulation S–T (17 CFR 231.314); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

along with other information on EMMA about the municipal Exchange Act-ABS.

11. Form ID

NRSROs would need to file a Form ID with the Commission in order to gain access to the Commission's EDGAR system to electronically submit Form NRSROs submitted pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports submitted pursuant to Rule 17g–3 through the EDGAR system with the Commission.[936] The use of this information is addressed in Sections IV.D.1, IV.D.4 and IV.A.10 of this release.

C. Respondents

In adopting the first rules under the Rating Agency Act of 2006, the Commission estimated that approximately 30 credit rating agencies ultimately would be registered as NRSROs.[937] Since that time, 10 credit rating agencies have registered with the Commission as NRSROs.[938] This number has remained constant for several years. Consequently, while the Commission expects several more credit rating agencies may become registered as NRSROs over the next few years, the Commission preliminarily believes that the actual number of NRSROs should be used for purposes of the PRA.

The Commission notes the current industry-wide annual burden estimates for the NRSRO Rules are based on 30 respondents. Consequently, these estimates would need to be adjusted to reflect the Commission's use of the actual number of NRSROs (*i.e.,* 10 respondents). In this regard, the current OMB approved industry-wide annual hour burdens are: 6,400 hours for Rule 17g–1 and Form NRSRO; 12,000 hours for Rule 17g–2; 7,900 hours for Rule 17g–3; and 96,948 hours for Rule 17g–7. Adjusting for 10 respondents, these industry-wide annual hour burdens would be: 2,133 hours for Rule 17g–1 and Form NRSRO;[939] 4,000 hours for Rule 17g–2;[940] 2,633 hours for Rule 17g–3;[941] and 92,948 hours for Rule 17g–7.[942] For the purposes of the PRA discussion below and the economic analysis in Section V of this release, the Commission uses the adjusted current industry-wide annual hour burdens above (the "adjusted industry-wide annual hour burdens"). For example, when discussing how a proposed amendment would increase an industry-wide annual hour burden, the Commission adds the increased hour burden to the applicable rule's adjusted current industry-wide annual hour burden.

The Commission preliminarily believes there are approximately 10 firms that provide, or would begin providing, third-party "due diligence services" to issuers and underwriters of Exchange Act-ABS as the term "due diligence services" would be defined in paragraph (a) of proposed new Rule 17g–10.[943] As discussed in Section II.H.2 of this release, the Commission preliminarily believes that the firms providing third-party "due diligence services" as that term would be defined in proposed new Rule 17g–10 concentrate mostly on providing such services for RMBS. Consequently, given the low issuance rate for RMBS, the number of active firms may be small but it could grow if issuance volume increases.

The Commission preliminarily believes there are 270 unique securitizers that would be subject to the proposed requirements in new Rule 15Ga–2 and the amendments to Form ABS–15G.[944] This estimate is based on the Commission's estimate of the number of securitizers that would be subject to requirements in Rule 15Ga–1 and Form ABS–15G.[945]

Request for Comment

The Commission generally requests comment on all aspects of these estimates of the number of respondents. In addition, the Commission requests specific comments on the following:

1. Is it reasonable for the Commission to use the actual number of NRSROs for purposes of the PRA? Alternatively, should the Commission either use, for purposes of the PRA, the estimate of 30 NRSROs it has used in the past or develop and use a new estimate of the expected eventual number of NRSROs? Explain any choices made with respect to the number of NRSROs that should be used for the purposes of the PRA, including any data and analysis supporting the choice.

2. Identify any sources of industry information that could be used to estimate the number of NRSROs that may become registered with the Commission over the next few years for purposes of the PRA.

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[936] *See* Section II.L of this release for a more detailed discussion of these proposals.

[937] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33607 (June 18, 2007).

[938] A.M. Best Company, Inc., DBRS Ltd., Egan-Jones Rating Company, Fitch, Inc., Japan Credit Rating Agency, Ltd., Kroll Bond Rating Agency, Inc. (formerly LACE Financial Corp.), Moody's Investors Service, Inc., Rating and Investment Information, Inc., Realpoint LLC, and Standard & Poor's Ratings Services.

[939] The current OMB approved total industry-wide annual hour burden for Rule 17g–1 and Form NRSRO of 6,400 hours is based on 30 respondents preparing and filing Form NRSROs. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33607–33609 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6470 (Feb. 9, 2009), and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63889–63890 (Dec. 4, 2009). Consequently, the adjusted current industry-wide annual hour burden for Rule 17g–1 and Form NRSRO would be 2,133 hours (6,400 hours/30 NRSROs = 213 hours; 10 NRSROs × 213 hours = 2,133 hours).

[940] The current OMB approved total industry-wide annual hour burden for Rule 17g–2 of 12,000 hours is based on 30 respondents making and retaining the required records identified in paragraphs (a) and (b) of Rule 17g–2 and making the required disclosures in paragraphs (d)(2) and (d)(3) (except the hour burden resulting from paragraph (d)(2) of Rule 17g–2 was allocated across 7 NRSROs; however, the impact on the per firm total of allocating to 7 as opposed to 10 firms is minimal). *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33609–33610 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6473 (Feb. 9, 2009), and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63888–63889 (Dec. 4, 2009). Consequently, the adjusted current industry-wide annual hour burden for Rule 17g–2 would be 4,000 hours (12,000 hours/30 NRSROs = 400 hours; 10 NRSROs × 400 hours = 4,000 hours).

[941] The current OMB approved total industry-wide annual hour burden for Rule 17g–3 of 7,900 hours is based on 30 respondents preparing and filing the annual reports. *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33610 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6473 (Feb. 9, 2009), and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63888–63889 (Dec. 4, 2009). Consequently, the adjusted current industry-wide annual hour burden for Rule 17g–3 would be 2,633 hours (7,900 hours/30 NRSROs = 263 hours; 10 NRSROs × 263 hours = 2,633 hours).

[942] Of the 96,948 hours in the current OMB approved total industry-wide annual hour burden for Rule 17g–7, 90,948 hours are based on the number of Exchange Act-ABS transactions per year for which the disclosure requirement in the rule would apply (*i.e.,* not based on the number of respondents). *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011). However, 6,000 hours in that total are based on the number of respondents. *Id.* Consequently, the adjusted current industry-wide annual hour burden for Rule 17g–7 would be 92,948 hours (6,000 hours/30 NRSROs = 200 hours; 10 NRSROs × 200 hours = 2,000 hours; 90,948 hours + 2,000 hours = 92,948 hours).

[943] *See, e.g.,* Testimony of Vicki Beal, Senior Vice President, Clayton Holdings, before the Financial Crisis Inquiry Commission (Sept. 23, 2010).

[944] *See* proposed new Rule 15Ga–2 and the amendments to Form ABS–15G; *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[945] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4506–4507 (Jan. 26, 2011)

3. Is the estimate that 10 firms will be operate as third-party "due diligence service" providers over the next few years reasonable? Alternatively, should the Commission use some other number? Explain any choices made with respect to the number of third-party "due diligence service" providers that should be used for the purposes of the PRA, including any data and analysis supporting the choice.

4. Identify any sources of industry information that could be used to estimate the number of third-party "due diligence service" providers for purposes of the PRA.

D. Total Initial and Annual Recordkeeping and Reporting Burdens

Unless otherwise noted, the one-time and annual hour burden estimates per NRSRO described below are averages across all types of NRSROs that would be subject to the proposed amendments and new rules. The NRSROs vary, in terms of size and complexity, from small entities that employ less than 20 credit analysts to complex global organizations that employ over a thousand credit analysts.[946] Given the variance in size between the largest NRSROs and the smallest NRSROs, the burden estimates, as averages across all NRSROs, are skewed higher because the largest firms currently dominate in terms of size and the volume of credit rating issuance.[947]

As discussed below, with respect to some burden estimates, the Commission preliminarily believes it would be reasonable to use the approximate number of credit ratings outstanding or the number of credit analysts employed based on the most recently submitted annual certifications of the NRSROs.[948] These data are presented in Figure 2 and Figure 3 below, respectively.

FIGURE 2—OUTSTANDING CREDIT RATINGS REPORTED BY NRSROS ON FORM NRSRO BY RATINGS CLASS

NRSRO	Financial institutions	Insurance companies	Corporate issuers	Asset-backed securities	Government, municipal & sovereign	Total ratings
A.M. Best	3	5,364	2,246	54	0	7,667
DBRS	16,630	120	5,350	8,430	12,400	42,930
EJR	82	45	853	14	13	1,007
Fitch	72,311	4,599	12,613	69,515	352,697	511,735
JCR	156	31	518	64	53	822
Kroll	17,263	60	1,000	0	61	18,384
Moody's	76,801	5,455	31,008	106,337	862,240	1,081,841
R&I	100	30	543	186	123	982
Realpoint	0	0	0	8,856	0	8,856
S&P	52,500	8,600	41,400	124,600	1,004,500	1,231,600
Total	235,846	24,304	95,531	318,056	2,232,087	2,905,824
HHI	2,599	2,601	3,145	3,145	3,767	3,495
HHI Inverse	3.85	3.84	3.18	3.18	2.65	2.86

FIGURE 3—CREDIT ANALYSTS EMPLOYED REPORTED BY NRSROS ON FORM NRSRO

NRSRO	Credit analysts	Credit analyst supervisors
A.M. Best	134	42
DBRS	67	20
EJR	5	3
Fitch	1,035	345
JCR	61	27
Kroll	7	4
Moody's	1,096	143
R&I	81	6
Realpoint	15	7
S&P	1,019	223
Total	3,520	820

1. Proposed Amendments to Rule 17g–1

The Commission is proposing several amendments to Rule 17g–1. As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

The Commission proposes amending paragraph (i) of Rule 17g–1 to require that an NRSRO make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site.[949] The proposed amendment would remove the option for an NRSRO to make the Form publicly available "through another comparable, readily accessible means" as an alternative to Internet Web site disclosure. The Commission preliminarily estimates that there would be a minimal one-time hour burden attributable to requiring that an NRSRO make Form NRSRO and Exhibits 1 through 9 freely available on an easily

[946] *See, e.g., Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 4–9.

[947] Based on data collected from the NRSROs in their Form NRSROs and Rule 17g-3 annual reports, the Commission has used the Herfindahl-Hirschmann Index (HHI) to analyze market concentration among the 10 NRSROs. *Id.* HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting number. *Id.* The HHI is measured on a scale of 0 to 10,000 and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases. *Id.* According to the U.S. Department of Justice, markets in which the HHI is between 1,000 and 1,800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1,800 points are considered to be concentrated. *Id.* The Commission has calculated an HHI number using the number credit ratings outstanding per NRSRO and that number is 3,495, which is equivalent to there being approximately 2.86 equally sized firms. *Id.* The HHI using earnings reported by NRSROs in the Rule 17g-3 annual reports is 3,926, which the equivalent of 2.55 equally sized firms. *Id.* The inverse of the HHI ("HHI Inverse") is a measure of the number of equally sized firms which would constitute a comparable level of concentration for a given HHI and is calculated by dividing 10,000 by the HHI. *Id.*

[948] *See, Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 4–9.

[949] *See* proposed amendments to paragraph (i) of Rule 17g–1; *see also* Section II.E.1.b of this release for a more detailed discussion of this proposal.

accessible portion of its corporate Internet Web site and removing the option for an NRSRO to make its Form NRSRO and Exhibits 1 through 9 available through another comparable, readily accessible means. Currently, all NRSROs make Form NRSRO and Exhibits 1 through 9 available on their corporate Internet Web sites.[950] However, as noted earlier, the Commission preliminarily believes that a Form NRSRO and Exhibits 1 through 9 would be "easily accessible" if they could be accessed through a clearly and prominently labeled hyperlink on the home page of the NRSRO's corporate Internet Web site. All NRSROs would need to make changes to their corporate Internet Web sites to place clearly and prominently labeled hyperlinks on the Web sites to Form NRSRO and Exhibits 1 through 9. Based on staff experience, the Commission preliminarily estimates that re-configuring a corporate Internet Web site for this purpose would take an average of approximately 5 hours. For these reasons, the Commission preliminarily estimates that the proposed requirement would result in an average one-time hour burden to each NRSRO of approximately 5 hours, resulting in an average one-time industry-wide hour burden of approximately 50 hours.[951] The Commission preliminarily estimates that NRSROs would prepare these responses internally using their own corporate Internet Web site administrators. The Commission preliminarily does not believe the proposed requirement would result in an increase in the industry-wide annual hour burden attributable to Rule 17g–1 and Form NRSRO.

The Commission also is proposing to amend paragraph (i) of Rule 17g–1 to require that Exhibit 1 be made freely available in writing when requested. This would implement rulemaking mandated in Section 15E(q)(2)(D) of the Exchange Act.[952] With respect to making Exhibit 1 freely available in writing, the Commission notes that, under the proposed amendments to paragraph (i) of Rule 17g–1, Form NRSRO and Exhibits 1 through 9 would need to be made freely available on an easily accessible portion of the NRSRO's corporate Internet Web site. Moreover, as noted above, NRSROs currently comply with paragraph (i) of Rule 17g–1 by making their Form NRSROs and Exhibits 1 through 9 available on their corporate Internet Web sites. Consequently, an individual with access to the Internet and a printer can (and would be able to) obtain Exhibit 1 immediately through the Internet and could print the Exhibit if the individual wanted to have it in paper form. Therefore, the Commission preliminarily estimates that the instances in which an individual would request an NRSRO to provide a written copy of Exhibit 1 would be rare, given that the individual would need to wait for the request to be processed by the NRSRO and the Exhibit to arrive by mail as opposed to accessing it immediately via the Internet. Nonetheless, the Commission preliminarily estimates that some number of individuals may request an NRSRO to provide Exhibit 1 in writing.

The Commission preliminarily estimates that the proposed requirement would result in a one-time hour burden to each NRSRO as they would need to establish procedures and protocols for receiving and processing these requests. Based on staff experience, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 48 hours establishing such procedures and protocols, resulting in an average industry-wide one-time hour burden of approximately 480 hours.[953]

In terms of annual hour burden, the Commission notes it is difficult to quantify the number of requests an NRSRO would receive each year. However, the Commission preliminarily estimates each NRSRO would on average receive approximately 200 requests per year and would spend an average of 20 minutes processing each request. The estimate of 200 requests is intended to serve as a "placeholder" for PRA purposes and the Commission will revise this estimate based on information provided by NRSROs and other commenters. For these reasons, the Commission estimates that the average annual hour burden to each NRSRO would be approximately 67 hours,[954] resulting in a total industry-wide annual hour burden of approximately 670 hours.[955] The Commission preliminarily estimates that NRSROs would prepare these responses internally.

The Commission also is proposing to amend paragraphs (e), (f), and (g) of Rule 17g–1 to require that an NRSRO use the Commission's EDGAR system to electronically submit Form NRSRO and Exhibits 1 through 9 with the Commission pursuant to these paragraphs in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.[956] NRSROs currently submit these documents to the Commission in paper form.

The Commission preliminarily estimates that each NRSRO would spend an average of approximately 5 hours becoming familiar with the EDGAR filing system and completing and submitting Form ID, which is necessary to access the system. As discussed below, the Commission preliminarily estimates that the one-time hour burden for each NRSRO to complete Form ID would be 15 minutes.[957] In addition, as discussed above and below, the Commission is proposing that the Rule 17g–3 annual report also be submitted using the EDGAR system.[958] The Commission's preliminary estimate of 5 hours to become familiar with the EDGAR system would include developing an understanding of how to use the system for both submitting Form NRSROs and submitting the Rule 17g–3 annual reports. Consequently, for purposes of the PRA and the Economic Analysis in Section V of this release, the Commission is allocating this one-time hour burden and corresponding cost solely to Rule 17g–1. In addition, because the hour burden of 15 minutes for Form ID is addressed below, the Commission estimates that each NRSRO would spend an average of 4.75 hours becoming familiar with how to use the EDGAR system, resulting in an industry-wide one-time hour burden of approximately 47.5 hours.[959]

The Commission does not believe changing the method of submitting Form NRSRO and Exhibits 1 through 9 from a paper submission to an electronic submission would increase the current annual hour burden for Rule 17g–1. In particular, the Commission believes that both the amount of time it currently takes an NRSRO to send these materials, once compiled, to the Commission's headquarters by mail, messenger, or hand-delivery by a representative of the NRSRO and the time it would take to submit them electronically through the EDGAR system are *de minimus.*

[950] *See, e.g., Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 18–19.

[951] 10 NRSROs × 5 hours = 50 hours.

[952] *See* 15 U.S.C. 78o–7(q)(2)(D).

[953] 10 NRSROs × 48 hours = 480 hours.

[954] 200 requests × 20 minutes per request = 67 hours per year.

[955] 10 NRSROs × 67 hours per year = 670 hours per year.

[956] *See* proposed amendments to paragraphs (e), (f), and (g) of Rule 17g–1; *see also* Section II.L of this release for a more detailed discussion of these proposals.

[957] *See* Section IV.D.11 of this release.

[958] *See* proposed amendments to Regulation S–T and Rule 17g–3; *see also* Section II.L of this release for a more detailed discussion of this proposal.

[959] 10 NRSROs × 4.75 hours = 47.5 hours.

For the foregoing reasons, the Commission estimates that the total industry-wide one-time hour burden resulting from the proposed amendments to Rule 17g–1 would be approximately 577.5 hours [960] and the total industry-wide annual burden would be approximately 670 hours.[961]

2. Proposed Amendments to Form NRSRO Instructions

The Commission is proposing to amend the instructions for Exhibit 1 to Form NRSRO.[962] The amendments would confine the disclosures in the Exhibit to transition and default rates and certain limited supplemental information.[963] Moreover, the amendments would standardize the production and presentation of the transition and default statistics. As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

The Commission notes that an NRSRO currently is required to provide transition and default rates in Exhibit 1 for each class of credit rating for which it is registered and for 1, 3, and 10-year periods. The Commission preliminarily estimates that an NRSRO would use the internal information technology systems and expertise and other resources it currently devotes to processing the information necessary to monitor credit ratings and calculate transition and default statistics in order to program a system to comply with the proposed amendments to the Instructions for Exhibit 1. At the same time, the Commission notes that, under the proposed amendments, NRSROs would be required to adhere to specific requirements that may not be the same as their current methods for calculating and presenting transition and default rates. Consequently, the Commission preliminarily estimates that the proposed amendments requiring standardized Transition/Default Matrices would result in a one-time hour burden to program existing systems to create the Transition/Default Matrices that would be required under the proposed amendments and an increase in the annual hour burden to comply with the proposed instructions to Exhibit 1.

As noted above, the size and complexity of the NRSROs varies greatly. The magnitude of this variance is reflected in the number of credit ratings each NRSRO has outstanding.[964] For example, two NRSROs have over 1,000,000 credit ratings outstanding in the classes of credit ratings for which they are registered; others have fewer than 1,000 such ratings.[965] The hour burden associated with calculating and presenting these performance statistics would depend in large part on the number of obligors, securities, and money market instruments assigned credit ratings by the NRSRO.[966] Consequently, the one-time and annual burdens per NRSRO would vary widely.

In order to account for this variance, the Commission preliminarily believes that the one-time and annual hour burden estimates should be based on the number of credit ratings outstanding. Based on the annual certifications submitted by the NRSROs for the 2009 calendar year-end, there were approximately 2,905,824 credit ratings outstanding across all 10 NRSROs.[967] The Commission preliminarily estimates that the one-time industry-wide hour burden to establish systems to process the relevant information necessary to calculate the Transition/Default Matrices and make the necessary calculations would be approximately 3 seconds per outstanding credit rating, which would result in a one-time industry-wide hour burden of approximately 2,420 hours.[968] Moreover, because of the wide variance in the number of credit ratings outstanding among the NRSROs, the Commission preliminarily estimates that this one-time hour burden of 2,420 hours would be allocated to the 10 NRSROs based on the number of credit ratings each has outstanding (although larger NRSROs may realize economies of scale). For example, the two largest NRSROs had just over 1,000,000 credit ratings outstanding, the next largest had approximately 500,000 credit ratings outstanding, and the remaining 7 NRSROs had amounts ranging from 42,930 credit ratings outstanding to 982 credit ratings outstanding.[969]

The Commission preliminarily believes that the annual hour burden to comply with the proposed amendments to the Instructions for Exhibit 1 would be less than the one-time hour burden since the NRSROs would have established systems to process the necessary information to produce the required Transition/Default Matrices. Consequently, the Commission preliminarily estimates that the annual hour burden to each NRSRO to calculate the Transition/Default Matrices would be approximately 1.5 seconds per outstanding credit rating, resulting in an industry-wide annual hour burden of approximately 1,210 hours.[970] Moreover, although larger NRSROs may realize economies of scale, the Commission preliminarily estimates that the industry-wide annual hour burden of 1,210 hours would be allocated to each NRSRO based on the number of credit ratings the firm had outstanding.[971]

For the foregoing reasons, the Commission estimates that the total industry-wide one-time hour burden resulting from the proposed amendments to the instructions for Exhibit 1 to Form NRSRO would be approximately 2,420 hours and the total industry-wide annual burden would be approximately 1,210 hours.[972]

[960] 480 hours + 50 + 47.5 hours = 577.5 hours.

[961] This estimate would increase the adjusted industry-wide annual hour burden for Rule 17g–1 and Form NRSRO from 2,133 hours to 2,803 hours (2,133 hours + 670 hours = 2,803 hours).

[962] *See* Instruction H to Form NRSRO (as it relates to Exhibit 1).

[963] *See* proposed amendments to the instructions for Exhibit 1 to Form NRSRO (17 CFR 249b.300); *see also* Section II.E.1.a of this release for a more detailed discussion of this proposal.

[964] *See* Figure 2 in Section IV.D of this release.

[965] *Id.*

[966] For example, as discussed in more detail in Section II.E.1.a of this release, the applicant or NRSRO, in producing a Transition/Default Matrix, would need to determine a start-date cohort consisting of the obligors, securities, and money market instruments in the applicable class or subclass of credit ratings that were assigned a credit rating that was outstanding as of the start date for the applicable period (*i.e.,* the date 1, 3, or 10 years prior to the most recently ended calendar year). The applicant or NRSRO also would need to group the obligors, securities, and money market instruments in the start-date cohort based on the credit rating assigned to them as of the start date and determine the outcome for each such obligor, security, and money market instrument in the group during, or as of the end of, the relevant period. This exercise would be more time-consuming for an NRSRO that has over 1,000,000 credit ratings outstanding than for an NRSRO that has fewer than 10,000 credit ratings outstanding (2 NRSROs have over 1,000,000 credit ratings outstanding and 5 NRSROs have fewer than 10,000 credit ratings outstanding). *See* Figure 2 in Section IV.D of this Release.

[967] *Id.*

[968] 2,905,824 credit ratings × 3 seconds = 2,421.52 hours (rounded to 2,420 hours).

[969] *See* Figure 2 in Section IV.D of this release.

[970] 2,905,824 credit ratings × 1.5 seconds = 1,210.76 hours (rounded to 1,210 hours).

[971] *See* Figure 2 in Section IV.D of this release.

[972] These estimates would increase the adjusted industry-wide annual hour burden for Rule 17g–1 and Form NRSRO from 2,133 hours to 3,343 hours (2,133 hours + 1,210 hours = 3,343 hours). Combined with the industry-wide annual burden hour increase of 670 hours resulting from the proposed amendments to Rule 17g–1 discussed above in Section IV.D.2 of this release, the total increase to the adjusted industry-wide annual hour burden for Rule 17g–1 and Form NRSRO would be from 2,133 hours to 4,013 hours (2,133+670 hours + 1,210 hours = 4,013 hours). The Commission notes that the adjusted industry-wide annual hour burden for all of Rule 17g–1 and Form NRSRO (which includes providing the transition and default rates required in Exhibit 1 under the existing instructions) is 2,133 hours. Consequently, the Commission preliminarily believes these estimates of the incremental burden that would

3. Proposed Amendments to Rule 17g–2

The Commission proposes adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of Rule 17g–8 as a record that must be made and retained.[973] In addition, the Commission is proposing to add the following new paragraphs to Rule 17g–2 to identify records that must be retained: (1) paragraph (b)(12) would identify the internal control structure an NRSRO must establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A);[974] (2) paragraph (b)(13) would identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g–8;[975] (3) paragraph (b)(14) would identify the policies and procedures an NRSRO must establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g–8;[976] and (4) paragraph (b)(15) would identify the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9.[977] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

The Commission is providing preliminary estimates below in Section IV.D.5 of this release of the one-time and annual hour burdens that would result from establishing, maintaining, enforcing, and *documenting* the policies and procedures required by Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of Rule 17g–8. Because the requirement to *document* these procedures would be the same as the requirement in proposed paragraph (a)(9) of Rule 17g–2 to *make* this record, the PRA burdens associated with that aspect of the making of the record are addressed below in Section IV.D.5 of this release.

Consequently, for the purposes of Rule 17g–2, the Commission is providing preliminary estimates of the one-time and annual hour burdens resulting from the requirement to *retain* the records that would be identified in new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2. The Commission preliminarily estimates that the one-time hour burden would result from the NRSRO needing to update its record retention policies and procedures to incorporate these new records that would need to be retained. Based on staff experience, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 20 hours updating its record retention policies and procedures, resulting in an industry-wide one-time hour burden of approximately 200 hours.[978]

In terms of annual hour burden, the Commission notes that the adjusted industry-wide annual hour burden attributable to Rule 17g–2 is 4,000 hours, resulting in an average annual burden of 400 hours per NRSRO.[979] This burden amount is attributable to 8 different types of records that must be made and retained by the NRSRO, 11 types of records that must be retained if made or received, and to the disclosure requirements in paragraphs (d)(2) and (d)(3) of Rule 17g–2.[980] The Commission preliminarily believes that most of the hour burden is attributable to making the records identified in paragraph (a) of the Rule 17g–2 and making the disclosures required in paragraph (d) of Rule 17g–2 as this work is substantially more labor intensive than retaining a record. Consequently, the Commission preliminarily estimates that the burden associated with retaining the 5 new records that would be identified in new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 would be minimal because NRSROs already should have well-established procedures with respect to the records they must make and retain pursuant to Rule 17g–2. In addition, the Commission does not expect the new records would change frequently given that they would be the NRSRO's internal control structure required pursuant to Section 15E(c)(3)(A) of the Exchange Act,[981] various types of policies and procedures, and the standards of training, experience, and competence for credit analysts an NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9. Accordingly, once the original record is retained, the need to expend resources to retain updated versions of the original record would be infrequent. Therefore, the Commission preliminarily estimates that it would take approximately one hour per record each year to retain updated versions of these records. For these reasons, the Commission preliminarily estimates that the annual hour burden for each NRSRO attributable to these proposals would be approximately 5 hours,[982] resulting in an industry-wide annual hour burden of approximately 50 hours.[983]

The Commission is proposing to repeal paragraph (d)(2) of Rule 17g–2 and re-codify and enhance the requirements in paragraph (d)(3) of Rule 17g–2 in proposed new paragraph (b) of Rule 17g–7.[984] The Commission preliminarily estimates that the repeal and re-codification would result in *de minimis* one-time hour burdens to each NRSRO.[985] The one-time and annual hour burden resulting from the proposed enhancements to the requirements currently codified in paragraph (d)(3) are discussed below in Section V.D.4 of this release, which addresses the one-time and annual hour burdens resulting from the proposed amendments to Rule 17g–7.

For the foregoing reasons, the Commission estimates that the total industry-wide one-time hour burden resulting from the proposed amendments to Rule 17g–2 would be approximately 200 hours and the total industry-wide annual hour burden would be approximately 50 hours.[986]

result from the proposed amendments to the Instructions for Exhibit 1 are conservatively large.

[973] *See* proposed new paragraph (a)(9) to Rule 17g–2(a)(9); *see also* Section II.C.2 of this release for a more detailed discussion of this proposal.

[974] *See* proposed new paragraph (b)(12) of Rule 17g–2; *see also* Section II.A.2 of this release for a more detailed discussion of this proposal.

[975] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section II.F.2 of this release for a more detailed discussion of this proposal.

[976] *See* proposed new paragraph (b)(14) to Rule 17g–2; *see also* Section II.J.2 of this release for a more detailed discussion of this proposal.

[977] *See* proposed new paragraph (b)(15) to Rule 17g–2; *see also* Section II.I.2 of this release for a more detailed discussion of this proposal.

[978] 10 NRSROs × 20 hours = 200 hours.

[979] 4,000 hours/10 NRSROs = 400 hours.

[980] *See* 17 CFR 240.17g–2(a), (b), (d)(2), and (d)(3).

[981] *See* 15 U.S.C. 78o–7(c)(3)(A).

[982] 5 records × 1 hour = 5 hours.

[983] 10 NRSROs × 5 hours = 50 hours.

[984] *See* proposed amendments to paragraphs (d)(2) and (3) of Rule 17g–2 and proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[985] For example, each NRSRO likely would remove the disclosures required pursuant to paragraph (d)(2) Rule 17g–2 from its corporate Internet Web sites (though such a removal would not be mandatory).

[986] The adjusted industry-wide annual hour burden for Rule 17g–2 is 4,000 hours. The elimination of the requirements in paragraph (d)(2) of Rule 17g–7 would subtract 70 hours from that amount. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6472 (Feb. 9, 2009). In addition, the re-codification of paragraph (d)(3) of Rule 17g–2 in proposed new paragraph (b) of Rule 17g–7 would subtract an additional 450 hours from the adjusted industry-wide annual hour burden for Rule 17g–2. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR

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4. Proposed Amendments to Rule 17g–3

The Commission proposes amending paragraphs (a) and (b) of Rule 17g–3 to implement the rulemaking mandated by Section 15E(c)(3)(B) of the Exchange Act.[987] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

The proposed amendment to paragraph (a) would add a new paragraph (a)(7) to require an NRSRO to include an additional report—a report on the NRSRO's internal control structure—with its annual submission of reports pursuant to Rule 17g–3. The proposed amendment to paragraph (b) of Rule 17g–3 would require the NRSRO's CEO or, if the firm does not have a CEO, an individual performing similar functions, to provide a signed statement that would be attached to the report. The Commission preliminarily estimates that the proposed amendments would result in one-time and annual hour burdens.

The Commission notes that NRSROs already should have developed processes and protocols to prepare the annual reports required by Rule 17g–3. Consequently, the Commission preliminarily estimates that the internal hour burden associated with the first submission of the report would not be materially different than the hour burden associated with submitting subsequent reports, although the time required to prepare subsequent reports could decrease incrementally over time as the NRSRO gains experience with the requirement. The Commission, however, preliminarily estimates that an NRSRO likely would engage outside counsel to analyze the requirements for the report and assist in drafting and reviewing the first report, given that it must be signed by the NRSRO's CEO or an individual performing a similar function. The time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO. The Commission preliminarily estimates that an attorney would spend an average of approximately 100 hours assisting an NRSRO and its CEO or other qualified individual in drafting and reviewing the first report, resulting in an industry-wide external one-time hour burden of approximately 1,000 hours.[988] Based on industry sources, the Commission estimates that the cost of an outside counsel would be approximately $400 per hour.[989] For these reasons, the Commission estimates that the average one-time cost to an NRSRO would be approximately $40,000,[990] resulting in an industry-wide one-time cost of approximately $400,000.[991]

The Commission preliminarily estimates, based on staff experience, that each NRSRO would spend on average approximately 150 hours preparing the internal control report to be included with the other annual reports filed with the Commission, resulting in an industry-wide annual burden of approximately 1,500 hours.[992]

In addition, the Commission preliminarily estimates that an NRSRO likely would continue to engage outside counsel to assist in preparing the report. As noted above, the time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO. In addition, the Commission preliminarily estimates that the time an outside attorney would spend assisting in the preparation of subsequent reports would be less than the time spent on preparing the first report since the counsel's work would not need to include an initial analysis of the new requirements. Consequently, the Commission estimates that an attorney would spend an average of approximately 50 hours assisting an NRSRO and its CEO or other qualified individual in drafting and reviewing the report, resulting in an industry-wide annual hour burden of approximately 500 hours.[993] As stated above, the Commission estimates that the cost of an outside counsel would be approximately $400 per hour. For these reasons, the Commission estimates that the average annual cost to an NRSRO to comply with this requirement would be approximately $20,000,[994] resulting in an industry-wide annual cost of approximately $200,000.[995]

The amendments also would require that the Rule 17g–3 annual reports be submitted electronically on the Commission's EDGAR system.[996] As discussed in Section IV.D.1 of this release, the Commission preliminarily estimates each NRSRO would spend 5 hours becoming familiar with how to use the EDGAR system and to complete Form ID for the purposes of submitting Form NRSRO (and Exhibits 1 through 9) and the Rule 17g–3 annual reports. For the purposes of this PRA and the Economic Analysis section below, the Commission is allocating that time to Rule 17g–1 and Form ID.

In addition, the Commission does not believe that changing the method of submitting the annual reports from a paper submission to an electronic submission would increase the current hour burden for Rule 17g–3. For example, the Commission does not believe the amount of time it currently takes an NRSRO to gather these materials and send them to the Commission's headquarters by mail, messenger, or hand-delivery would be less than the time it would take to submit them electronically through the EDGAR system.

For the foregoing reasons, the Commission preliminarily estimates that the proposed amendments to Rule 17g–3 would result in a total industry-wide one-time cost of approximately $400,000, a total industry-wide annual hour burden of approximately 1,500 hours, and a total industry-wide annual cost of approximately $200,000.[997]

5. Proposed New Rule 17g–7

The Commission is proposing to add new paragraphs (a) and (b) to Rule 17g–7, which would contain substantial new requirements.[998] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

The Commission is proposing to add new paragraphs (a)(1) and (2) to Rule 17g–7 to implement rulemaking

at 63853 (Dec. 4, 2009). Consequently, after these subtractions, the adjusted industry-wide annual hour burden for Rule 17g–2 would be 3,480 hours (4,000 hours − 70 hours − 450 hours = 3,480 hours). The proposed amendments to add paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) to Rule 17g–2 would, as discussed above, add approximately 50 hours to the adjusted industry-wide annual hour burden resulting in a total adjusted industry-wide annual hour burden of 3,530 hours (3,480 hours + 50 hours = 3,530 hours).

[987] *See* proposed new paragraphs (a)(7) and (b)(2) of Rule 17g–3; *see also* Section II.A.3 of this release for a for a more detailed discussion of this proposal.

[988] 10 NRSROs × 20 hours = 200 hours.

[989] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour to engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[990] 100 hours × $400 = $40,000. *See also, Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an attorney).

[991] 10 NRSROs × $40,000 = $400,000.

[992] 10 NRSROs × 150 hours = 1,500 hours.

[993] 10 NRSROs × 20 hours = 200 hours.

[994] 50 hours × $400 = $20,000. *See also, Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an attorney).

[995] 10 NRSROs × $20,000 = $200,000.

[996] *See* proposed new paragraph (d) of Rule 17g–3; *see also* Section II.L of this release for a more detailed discussion of this proposal.

[997] This estimate would increase the adjusted industry-wide annual hour burden for Rule 17g–3 from 2,633 hours to 4,133 hours.

[998] 17 CFR 240.17g–7.

mandated in Sections 15E(s)(1), (2), (3), and (4)(D) of the Exchange Act.[999] Proposed new paragraphs (a)(1) and (2) of Rule 17g–2 would require, respectively, an NRSRO, when taking a rating action, to publish a form containing information about the credit rating resulting from, or subject to, the rating action and any certification of a provider of third-party due diligence services received by the NRSRO relating to the credit rating.[1000]

The Commission preliminarily believes that much of the information required to be disclosed in the form could be standardized based on the class and subclass of credit rating. For example, an NRSRO could develop a set of standardized disclosures for structured finance products based on whether the credit rating was issued for an RMBS, CMBS, CDO, CLO, ABCP, or other type of structured finance product. Similarly, for corporate issuers, the NRSRO could develop a set of standardized disclosures depending on factors such as the industry sector and geographic location of the rated issuer. In addition, the Commission believes that much of the information, particularly as it relates to the specific obligor, security, or money market instrument that is subject to the rating action, already would be generated or collected through the credit rating process. Finally, the Commission notes that globally active NRSROs are subject to similar requirements.[1001]

Consequently, the Commission estimates that the proposal would result in a one-time hour burden to develop the standardized disclosures and to create systems, protocols, and procedures for populating the form with information generated and collected during the rating process. In addition, the NRSRO would need to develop procedures designed to ensure that all the information required to be included in the form is input into the form prior to the publication of the credit rating, that any certifications received from a provider of third-party due diligence services are attached to the form, and that the form and certifications are published with the credit rating.

The Commission preliminarily estimates that the one-time hour burden to develop these standardized disclosures would vary considerably among NRSROs based on the number of credit ratings they issue and monitor and the number of classes and subclasses of credit ratings for which they issue and monitor credit ratings. Specifically, the larger NRSROs that issue and monitor a high volume of credit ratings across multiple classes and subclasses of credit ratings would bear a significantly greater burden than smaller NRSROs that may need to develop standardized disclosures for far fewer classes and subclasses of credit ratings. The Commission estimates that an NRSRO would spend an average of approximately 5,000 hours to develop the standardized disclosures and create the systems, protocols, and procedures for populating the form with information generated and collected during the rating process.[1002] However, the Commission preliminarily estimates that this amount is heavily skewed upward by the number of credit ratings issued, as well as the breadth of the classes and subclasses rated, by the three largest NRSROs as compared to the seven smaller NRSROs. Given the 5,000 hours per NRSRO preliminary estimate, the Commission preliminarily estimates that the proposal would result in a one-time industry wide hour burden of approximately 50,000 hours.[1003] In addition, the Commission preliminarily allocates 75% of these burden hours (37,500 hours) to internal burden and the remaining 25% (12,500 hours) to external burden to hire outside professionals to assist in setting up the process to generate the forms and publish them with applicable credit ratings.[1004] The Commission preliminarily estimates $400 per hour for retaining outside professionals such as attorneys and information technology consultants, resulting in an industry-wide one-time cost of approximately $5,000,000.[1005]

With respect to the annual hour burden, the Commission preliminarily estimates that the estimate should be divided into two components. The first component would constitute the amount of time an NRSRO would spend to update its standardized disclosures. The Commission preliminarily estimates an NRSRO would spend substantially less time updating the disclosures than the one-time estimate of approximately 5,000 hours per NRSRO to initially establish the standardized disclosures and the systems, protocols, and processes to generate the forms. Consequently, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 500 hours per year updating the standardized disclosures, resulting in an annual industry-wide hour burden of approximately 5,000 hours. The Commission preliminarily estimates that the update process would be handled by the NRSROs internally.

The second component would constitute the amount of time an NRSRO would spend generating and publishing each form and attaching applicable certifications to the form. The Commission preliminarily believes that this estimate should be based on the number of rating actions taken per year by the NRSROs because the requirement to generate and publish the form and attach the certifications would be triggered upon the taking of a rating action. Based on information submitted to the Commission by NRSROs pursuant to paragraph (a)(6) of Rule 17g–3, the Commission preliminarily estimates that NRSROs took approximately 2,000,000 credit rating actions in 2009, consisting of upgrades, downgrades, placements on credit watch, and withdrawals of credit ratings.[1006]

The Commission notes this figure does not include the following rating actions: Expected or preliminary credit ratings, initial credit ratings, and affirmations of existing credit ratings.[1007] Based on staff experience,

[999] *See* 15 U.S.C. 78o–7(s)(1), (2), (3), and (4)(D) and proposed new paragraph (a) of Rule 17g–7; *see also* Sections II.G.1 through G.5 of this release for a more detailed discussion of this proposal.

[1000] *See* proposed new paragraphs (a)(1) and (2) of Rule 17g–7.

[1001] *See, e.g.,* Regulation no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, Article 8.2 and Annex 1, Section D.

[1002] This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011). The Commission significantly increases the estimate for Form ABS–15G because the form required pursuant to Rule 17g–7 would contain substantially more qualitative information for which the NRSRO would need to develop standardized disclosures.

[1003] 10 NRSROs × 5,000 hours = 50,000 hours.

[1004] 50,000 hours × 0.75 = 37,500 hours; 50,000 hours × 0.25 = 12,500 hours. This allocation is based on the Commission's allocation of the industry-wide hour burden for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011).

[1005] 12,500 hours × $400 = $5,000,000. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1006] *See* 17 CFR 240.17g–7(a)(6).

[1007] As discussed in more detail in Section II.G.1 of this release, the Commission is proposing that the requirement to publish the form and any

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the Commission preliminarily believes expected or preliminary credit ratings are published primarily (but not exclusively) with respect to new issuances of structured finance products. In the PRA for the adoption of Rule 17g–7, the Commission estimated that there would be an average of approximately 2,067 Exchange Act-ABS offerings per year.[1008] The Commission, based on staff experience, believes expected or preliminary credit ratings are used in other types of offerings as well and, therefore, is increasing that estimate by 100% or to 4,134 preliminary or expected credit ratings per year.[1009]

In terms of estimating the number initial credit ratings, the Commission notes that there were approximately 2,905,824 credit ratings outstanding across all 10 NRSROs as of the 2009 calendar year-end.[1010] Based on staff experience, the Commission estimates that the average maturity of rated securities and money market instruments is approximately 7 years. Consequently, assuming 2,905,824 is the approximate average number of credit ratings outstanding at any given time, the Commission preliminarily estimates that approximately 415,117 initial credit rating are issued per year.[1011]

Finally, with respect to affirmations of existing credit ratings, the Commission preliminarily believes that NRSROs generally affirm existing credit ratings at least once a year. Consequently, the Commission preliminarily estimates that the number of affirmations would be the total number of credit ratings outstanding (2,905,824), less the number of credit ratings subject to other types of rating actions, excluding expected or preliminary ratings (2,000,000), and less the number of credit ratings assigned to securities or money market instruments that are paid off in full during the year (415,117). Consequently, the Commission preliminarily estimates that the number of affirmations per year is approximately 490,707.[1012]

Based on these estimates, the Commission preliminarily estimates that the 10 NRSROs take approximately 2,909,958 credit rating actions per year.[1013] The Commission preliminarily estimates that the time it would take to generate a form by populating it with the required disclosures and to publish the form with the credit rating would be approximately 15 minutes on average, resulting in an industry-wide annual hour burden of approximately 727,490 hours.[1014] Moreover, although larger NRSROs may realize economies of scale, the Commission preliminarily estimates that the annual burden would be allocated to the 10 NRSROs based on the number of credit ratings they have outstanding.[1015]

The Commission also is proposing to add new paragraph (b) to Rule 17g–7. The proposed amendments would: (1) Re-codify in paragraph (b) of Rule 17g–7 requirements currently contained in paragraph (d)(3) of Rule 17g–2; and (2) substantially enhance those requirements.[1016] The Commission notes that NRSROs currently are required to provide ratings history information for each credit rating initially determined on or after June 26, 2007. The Commission preliminarily estimates that NRSROs could use the internal information technology systems and expertise and other resources they currently devote to complying with this requirement to implement the proposed enhancements. At the same time, the Commission notes that, under the proposed amendments, NRSROs would be required to add substantially more ratings histories to the disclosures and provide more information about each rating action in the ratings history for a given obligor, security, or money market instrument. Consequently, the Commission preliminarily estimates that the proposed amendments would result in a one-time hour burden to program existing systems and initially add the ratings histories for all outstanding credit ratings as of June 26, 2007, and an incremental increase in the annual hour burden to comply with the enhanced requirements.

When adopting paragraph (d)(3) of Rule 17g–2, the Commission estimated that the average one-time hour burden per NRSRO would be approximately 45 hours.[1017] Based on that estimate, the Commission estimates that the proposed amendments to this disclosure requirement would result in an average one-time hour burden for each NRSRO of approximately 135 hours, resulting in an industry-wide one-time hour burden of approximately 1,350 hours.[1018] In addition, when adopting paragraph (d)(3) of Rule 17g–2, the Commission estimated the average annual burden per NRSRO would be approximately 15 hours.[1019] Based on that estimate, the Commission preliminarily estimates that the proposed enhancements would require each NRSRO to spend an average of 45 hours per year making the disclosures, resulting in an industry-wide annual hour burden of approximately 450 hours.[1020]

For the foregoing reasons, the Commission estimates that the proposed amendments to Rule 17g–7 would result in a total industry-wide one-time hour burden of approximately 51,350 hours,[1021] a total industry-wide one-time cost of approximately $5,000,000,[1022] and a total industry-wide annual hour burden of approximately 732,940 hours.[1023]

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certifications would be triggered when an NRSRO takes the following rating actions: Publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); a placement of an existing credit rating on credit watch or review; an affirmation of an existing credit rating; and a withdrawal of an existing credit rating.

[1008] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011).

[1009] 2,067 offerings × 2 = 4,134 offerings.

[1010] *See* Figure 2 in Section IV.D of this Release.

[1011] 2,905,824 credit ratings/7 = 415,117 credit ratings. In other words, the Commission estimates that issuers pay off in full all outstanding principal and interest outstanding with respect to approximately 415,117 rated securities or money market instruments and, consequently, the credit ratings for these securities and money market instruments are withdrawn. Those withdrawn credit ratings, in turn, are replaced by 415,117 initial (or new) credit ratings. The Commission notes that outstanding credit ratings assigned to securities and money market instruments are withdrawn for other reasons, including the security or money market instrument went into default. In addition, the Commission notes that a percent of the outstanding credit ratings are assigned to obligors as entities and, therefore, these credit ratings would not be withdrawn because an obligation was extinguished. However, they might be withdrawn for other reasons, including the obligor went into default. Nonetheless, the Commission preliminarily believes these estimates are reasonable approximations of the number of initial credit ratings determined per year.

[1012] [2,905,824 outstanding credit ratings] − [2,000,000 credit ratings that are upgraded, downgraded, placed on watch, or withdrawn] − [415,117 rated securities and money market instruments that pay off in full] = 490,707 affirmations.

[1013] [2,000,000 credit rating actions constituting upgrades, downgrades, placements on credit watch, and withdrawals] + [4,134 preliminary or expected credit ratings] + [415,117 initial credit ratings] + [490,707 affirmations of existing credit ratings] = 2,909,958 rating actions per year.

[1014] 2,909,958 rating actions × .25 hours = 727,489.5 hours (rounded to 727,490 hours).

[1015] *See* Figure 2 in Section IV.D of this release.

[1016] *See* proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[1017] *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63853 (Dec. 4, 2009).

[1018] 10 NRSRO × 135 hours = 1,350 hours.

[1019] *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63853 (Dec. 4, 2009).

[1020] 10 NRSRO × 45 hours = 450 hours.

[1021] 50,000 hours + 1,350 hours = 51,350 hours.

[1022] 12,500 hours × $400 = $5,000,000.

[1023] 727,490 hours + 5,000 hours + 450 hours = 732,940 hours. This estimate would increase the adjusted industry-wide annual hour burden for Rule 17g–7 from 92,948 hours to 820,888 hours (732,940 hours + 92,948 = 825,888 hours). In addition, the annual hour burden per NRSRO resulting from the existing requirements in

6. Proposed New Rule 17g–8

The Commission is proposing new Rule 17g–8, which would have three paragraphs (a), (b), and (c).[1024] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

Proposed paragraph (a) of new Rule 17g–8 would implement Section 15E(r) of the Exchange Act by requiring an NRSRO to have policies and procedures with respect to the procedures and methodologies the NRSRO uses to determine credit ratings.[1025] The Commission preliminarily estimates that the proposed requirement in paragraph (a) of new Rule 17g–8 would result in one-time and annual hour burdens for NRSROs. In this regard, the Commission notes that Section 15E(g)(1) of the Exchange Act requires an NRSRO to establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of the NRSRO, to prevent the misuse of material, nonpublic information by the NRSRO or any person associated with the NRSRO.[1026] The Commission supplemented this statutory requirement by adopting Rule 17g–4, which provides that the policies and procedures under Section 15E(g) of the Exchange Act must include policies and procedures reasonably designed to prevent: (1) The inappropriate dissemination within and outside the NRSRO of material nonpublic information obtained in connection with the performance of credit rating services; (2) a person within the NRSRO from purchasing, selling, or otherwise benefiting from any transaction in securities or money market instruments when the person is aware of material nonpublic information obtained in connection with the performance of credit rating services that affects the securities or money market instruments; and (3) the inappropriate dissemination within and outside the NRSRO of a pending credit rating action before issuing the credit rating on the Internet or through another readily accessible means.[1027]

When adopting Rule 17g–4, the Commission assumed NRSROs already had procedures in place to address the specific misuses of material nonpublic information identified in Rule 17g–4.[1028] Nonetheless, the Commission expected that some NRSROs might need to modify their procedures to comply with the rule.[1029] Based on staff experience, the Commission estimated that it would take approximately 50 hours for an NRSRO to establish procedures in conformance with the rule.[1030] Given the specificity of paragraph (a) proposed Rule 17g–8 as well as the fact that unlike the policies and procedures required under Rule 17g–4, the policies and procedures that would be required under paragraph (a) of proposed Rule 17g–8 would not be supplementing policies and procedures that are required under a separate self-executing statutory provision (*i.e.,* the requirement would be based solely on the Commission's rule), the Commission preliminarily believes that paragraph (a) of proposed Rule 17g–8 would result in a greater hour burden for an NRSRO. For these reasons, the Commission preliminarily estimates that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 2,000 hours.[1031] In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an industry-wide annual hour burden of approximately 500 hours.[1032]

Proposed paragraph (b) of new Rule 17g–8 would implement Section 938(a) of the Dodd-Frank Act by requiring an NRSRO to have policies and procedures with respect to the symbols, numbers, or scores it uses to denote credit ratings.[1033] These policies and procedures would be used by the NRSRO to achieve the objectives specified in Sections 938(a)(1) through (3) of the Dodd-Frank Act.[1034] For the reasons stated above with respect to proposed paragraph (a) of new Rule 17g–8, the Commission estimates that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 2,000 hours.[1035] In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an industry-wide annual hour burden of approximately 500 hours.[1036]

Proposed paragraph (c) of new Rule 17g–8 would implement Section 15E(h)(4)(A)(ii) of the Exchange Act by requiring the NRSRO to establish, maintain, and enforce certain policies and procedures pursuant to Section 15E(h)(4)(A) of the Exchange Act.[1037] The Commission preliminarily believes that the hour burdens resulting from this proposal would be closer to the one-time hour burden estimate for Rule 17g–4 because these policies and procedures would supplement policies and procedures that are required under a separate self-executing statutory provision. However, the Commission also believes there would be new policies and procedures and, therefore, as with the proposed requirements in paragraphs (a) and (b) of new Rule 17g–8, the NRSRO would need to establish new policies and procedures. For these reasons, the Commission preliminarily estimates an NRSRO would spend an average of approximately 100 hours establishing the policies and procedures, resulting in an industry-wide one-time hour burden of approximately 1,000 hours.[1038] In addition, the Commission preliminarily estimates an NRSRO would spend an average of approximately 25 hours per year reviewing the policies and procedures and updating them (if necessary), resulting in an average industry-wide annual hour burden of approximately 250 hours.[1039]

For the foregoing reasons, the Commission estimates that the total industry-wide one-time hour burden to the NRSROs resulting from the proposed amendments to Rule 17g–8

paragraph (d)(3) of Rule 17g–2 is 15 hours, which would result in an adjusted industry-wide annual hour burden of 150 hours (10 NRSROs × 15 hours = 150 hours). This amount would need to be transferred to the industry-wide annual hour burden for Rule 17g–7 resulting in a total industry-wide annual hour burden of 826,038 hours (825,888 hours + 150 hours = 826,038 hours).

[1024] New Rule 17g–8, if adopted, would be codified at 17 CFR 240.17g–8.

[1025] *See* 15 U.S.C. 78o–7(r) and proposed new paragraph (a) of Rule 17g–8; *see also* Section II.F.1 of this release for a more detailed discussion of this proposal.

[1026] *See* 15 U.S.C. 78o–7(g).

[1027] *See* 17 CFR 240.17g–4; *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33593–33595 (June 18, 2007).

[1028] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33610–33611 (June 18, 2007).

[1029] *Id.*

[1030] *Id.*

[1031] 10 NRSROs × 200 hours = 2,000 hours.

[1032] 10 NRSROs × 50 hours = 500 hours.

[1033] *See* Public Law 111–203 § 938(a) and proposed paragraph (b) of new Rule 17g–8; *see also* Section II.J.1 of this release for a more detailed discussion of this proposal.

[1034] *See* Public Law 111–203 §§ 938(a)(1)–(3).

[1035] 10 NRSROs × 200 hours = 2,000 hours.

[1036] 10 NRSROs × 50 hours = 500 hours.

[1037] *See* 15 U.S.C. 78o–7(h)(4)(A)(ii) and proposed new paragraph (c) of Rule 17g–8; *see also* Section II.C.1 of this release for a more detailed discussion of this proposal.

[1038] 10 NRSROs × 100 hours = 1,000 hours.

[1039] 10 NRSROs × 25 hours = 250 hours.

would be approximately 5,000 hours[1040] and the total industry-wide annual hour burden would be approximately 1,250 hours.[1041]

7. Proposed New Rule 17g–9

The Commission is proposing new Rule 17g–9.[1042] This rule would implement Section 936 of the Dodd-Frank Act by requiring an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings.[1043] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for NRSROs.

In this regard, the Commission preliminarily believes that several of the NRSROs already have implemented standards of training, experience, and competence for the individuals they employ to determine credit ratings. For example, Section 1.4 of the *Code of Conduct Fundamentals for Credit Rating Agencies* of the International Organization of Securities Commissions ("IOSCO Code") provides that credit rating agencies "should use people who, individually or collectively (particularly where rating committees are used) have appropriate knowledge and experience in developing a rating opinion for the type of credit being applied."[1044] A number of NRSROs disclose that they have implemented the IOSCO Code.[1045] In addition, some NRSROs disclose in the Exhibits to their Form NRSROs that they have standards of training, experience, competence, continuing education, and testing programs for their credit analysts.[1046]

As noted above, the size and complexity of the NRSROs varies greatly. The magnitude of this variance is reflected in the number of credit analysts and credit analyst supervisors each NRSRO employs (hereinafter collectively referred to as "credit analysts") as shown in Figure 3 above.[1047] For example, three NRSROs employed over 1,000 credit analysts as of calendar year-end 2009 and three NRSROs employed fewer than 30 credit analysts.

The Commission preliminarily estimates that the degree of the one-time and annual hour burdens resulting from proposed new Rule 17g–9 would depend on the number of credit analysts an NRSRO employs as well as the range and complexity of the obligors, securities, and money market instruments it rates. Consequently, the one-time and annual hour burdens per NRSRO would vary widely.

In order to account for this variance, the Commission preliminarily believes that the one-time and annual hour burden estimates should be based on the number of credit rating analysts employed by the NRSROs. Based on the 2009 annual certifications, the Commission estimates that the NRSROs currently employ approximately 3,520 credit analysts.[1048] In addition, as noted above, the Commission preliminarily believes some of the NRSROs have established standards of training, experience, and competence for their credit analysts. Consequently, for purposes of this estimate, the Commission preliminarily believes these firms would be required to augment or modify existing standards to comply with the proposed rule as opposed to developing a set of completely new standards. For these reasons, the Commission preliminarily estimates that the one-time burden to establish the standards required pursuant to proposed new Rule 17g–9 would be approximately 5 hours per credit analyst, resulting in an industry-wide one-time hour burden of approximately 17,600 hours.[1049] In addition, the Commission preliminarily allocates 75% of these burden hours (13,200 hours) to internal burden and the remaining 25% (4,400 hours) to external burden to hire outside professionals to assist in setting up training programs.[1050] The Commission preliminarily estimates $400 per hour for external costs for retaining outside consultants, resulting in an industry-wide cost of approximately $1,760,000.[1051] Although larger NRSROs may realize economies of scale, the Commission preliminarily estimates that the industry-wide annual hour burden of 17,600 hours, including the external burden costs, would be allocated to each NRSRO based on the number of credit analysts the firm employs.[1052]

The Commission believes that the annual hour burden to comply with proposed new Rule 17g–9 would be less than the one-time hour burden since NRSROs would have established the standards of training, experience, and competence for the individuals they employ to determine credit ratings. The annual hour burden would arise from reviewing and updating the standards. Consequently, the Commission preliminarily estimates that the annual industry-wide hour burden to update the standards would be approximately 1 hour per credit analyst employed, resulting in an industry-wide annual hour burden of approximately 3,520 hours across all NRSROs.[1053] In addition, the Commission preliminarily allocates 75% of these burden hours (2,640 hours) to internal burden and the remaining 25% (880 hours) to external burden to hire outside professionals to assist in reviewing and updating training programs.[1054] The Commission preliminarily estimates $400 per hour for external costs for retaining outside consultants, resulting in an industry-wide cost of $352,000.[1055] Finally,

[1040] 2,000 hours + 2,000 + 1,000 hours = 5,000 hours.

[1041] 500 hours + 500 hours + 250 hours = 1,250 hours.

[1042] Proposed new Rule 17g–9 would be codified at 17 CFR 240.17g–9, if adopted.

[1043] *See* Public Law 111–203 § 936 and proposed new Rule 17g–9; *see also* Section II.I.1 of this release for a more detailed discussion of this proposal.

[1044] *Code of Conduct Fundamentals for Credit Rating Agencies,* Technical Committee of IOSCO (May 2008).

[1045] The following NRSROs, for example, reported in Exhibit 5 to Form NRSRO that they comply with the IOSCO Code: A.M. Best Company, Inc., DBRS Ltd., Kroll Bond Rating Agency, Inc., Moody's Investors Service, Inc., Rating and Investment Information, Inc., Realpoint LLC, and Standard & Poor's Ratings Services.

[1046] For example, Fitch, Inc., Moody's Investors Service, Inc., and Standard & Poor's Ratings Services reported in Exhibit 8 to Form NRSRO that they had standards of experience and competence for their credit analysts, and Moody's Investors Service, Inc. reported in Exhibit 5 to Form NRSRO that its analysts were required to complete 20 hours of coursework annually.

[1047] These figures are based on the annual certifications on Form NRSRO submitted to the Commission and publicly disclosed by the NRSROs for the calendar year-end 2009. *See Annual Report on Nationally Recognized Statistical Rating Organizations,* Commission (Jan. 2011), p. 5.

[1048] NRSROs reported that they have a total of 3,520 credit analysts and 820 credit analyst supervisors. *See* Figure 3. As discussed above in Section II.M.4.b of this release, some NRSROs included credit analyst supervisors in the number of credit analysts they reported; whereas others may not have included the supervisors. Based on staff experience, the Commission preliminarily believes that the majority of NRSROs included credit analyst supervisors in the number of reported credit analysts. Consequently, for the purposes of the PRA, the Commission is using a total of 3,520 credit analysts across the 10 NRSROs.

[1049] 3,520 credit analysts × 5 hours = 17,600 hours.

[1050] 17,600 hours × 0.75 = 13,200 hours; 17,600 hours × 0.25 = 4,400 hours.

[1051] 4,400 hours × $400 = $1,760,000. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour to engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1052] *See* Figure 3.

[1053] 3,520 credit analysts × 1 hour = 3,520 hours.

[1054] 3,520 hours × 0.75 = 2,640 hours; 3,520 hours × 0.25 = 880 hours.

[1055] 880 hours × $400 = $352,000. *See Disclosure for Asset-Backed Securities Required by Section 943*

although larger NRSROs may realize economies of scale, the Commission estimates that the industry-wide annual hour burden of 3,520 hours, including the external costs, would be allocated to each NRSRO based on the number of credit analysts the firm employs.[1056]

For the foregoing reasons, the Commission estimates that proposed new Rule 17g–9 would result in a total industry-wide one-time hour burden of approximately 17,600 hours,[1057] a total industry-wide one-time cost of approximately $1,760,000, a total industry-wide annual hour burden of approximately 3,520 hours, and a total industry-wide annual external cost of approximately $352,000.

8. Proposed New Rule 17g–10 and Form ABS Due Diligence-15E

The Commission is proposing new Rule 17g–10 and new Form ABS Due Diligence-15E.[1058] Proposed new Rule 17g–10 would implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act by requiring that the written certification a provider of third-party due diligence services must provide to an NRSRO be made on Form ABS Due Diligence-15E.[1059] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for providers of third-party due diligence services.

In terms of one-time hour burdens, the Commission preliminarily estimates that providers of third-party due diligence services would need to develop processes and protocols to provide the required information in new Form ABS Due Diligence-15E and submit the certifications to NRSROs. The Commission preliminarily estimates that providers of third-party due diligence services would spend an average of approximately 300 hours per firm developing these processes and protocols, resulting in a one-time industry-wide hour burden of 3,000 hours.[1060] In addition, the Commission preliminarily allocates 75% of these burden hours (2,250 hours) to internal burden and the remaining 25% (750 hours) to external burden to hire outside attorneys to provide legal advice on the requirements of new Rule 17g–10 and Form ABS Due Diligence-15E.[1061] The Commission preliminarily estimates $400 per hour for external costs for retaining outside consultants, resulting in an industry-wide one-time cost of $300,000.[1062]

With respect to the annual burden, the Commission preliminarily believes that the estimate should be based on the number of issuances per year of Exchange Act-ABS because the requirement to produce the certification and provide it to NRSROs would be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services for transactions.[1063] In the PRA for the adoption of Rule 17g–7, the Commission estimated, on average, there would be approximately 2,067 Exchange Act-ABS offerings per year.[1064] In addition, the Commission preliminarily estimates that a provider of third-party due diligence services would spend approximately 30 minutes completing and submitting Form ABS Due Diligence-15E. The Commission bases this preliminary estimate on the fact that the first three Items in the form require basic information and the fourth Item (the due diligence performed) and the fifth Item (the findings and conclusions of the review) could be drawn directly from the due diligence reports the Commission expects that providers of third-party due diligence services generate with respect to their performance of due diligence services. Therefore, the Commission preliminarily estimates that the industry-wide annual hour burden resulting from proposed new Rule 17g–10 and Form ABS Due Diligence-15E would be approximately 1,034 hours.[1065]

For the foregoing reasons, the Commission estimates proposed new Rule 17g–8 would result in a total industry-wide one-time burden of approximately 3,000 hours, a total industry-wide one-time cost of approximately $300,000, and a total industry-wide annual hour burden of approximately 1,034 hours.

9. Rule 15Ga–2 and Form ABS–15G

The Commission is proposing new Rule 15Ga–2 and amendments to Form ABS–15G.[1066] The new rule and amended form would implement Section 15E(s)(4)(A) of the Exchange Act.[1067] As discussed below, the Commission preliminarily estimates that these proposals would result in additional one-time and annual hour burdens for issuers and underwriters of the Exchange Act-ABS.

Proposed new Rule 15Ga–2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter. Under the proposal, the disclosure would be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. In addition, under the Commission's proposal, an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation

of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour to engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1056] *See* Figure 3.

[1057] 2,000 hours + 2,000 + 1,000 hours = 5,000 hours.

[1058] Proposed new Rule 17g–10 would be codified at 17 CFR 240.17g–10 and proposed new Form ABS Due Diligence-15E would be identified at 17 CFR 249b.400.

[1059] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C), proposed new Rule 17g–10, and proposed new Form ABS Due Diligence-15E; *see also* Sections II.H of this release for a more detailed discussion of this proposal.

[1060] 10 Providers of third-party due diligence services × 300 hours = 3,000 hours. This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011). The Commission, however, has reduced the hour estimate of 850 hours used for Form ABS–15G by approximately two-thirds because information required to be provided in proposed new Form ABS Due Diligence-15E is substantially less detailed and complex than the information required in Form ABS–15G.

[1061] 3,000 hours × 0.75 = 2,250 hours; 3,000 hours × 0.25 = 750 hours.

[1062] 750 hours × $400 = $300,000. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour to engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1063] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C), and proposed new Rule 17g–10.

[1064] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011). The Commission notes that issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, as discussed in Section II.H of this release, the Commission preliminarily believes that providers of third-party due diligence services are used primarily for RMBS transactions. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS. This also makes the Commission's estimates more conservative.

[1065] 2,067 Exchange Act-ABS offerings × 30 minutes = 1,034 hours.

[1066] *See* proposed new Rule 15Ga–2 and proposed amendments to Form ABS–15G.

[1067] *See* 15 U.S.C. 78o–7(s)(4)(A); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7.

The Commission preliminarily believes that this proposal would result in a one-time hour burden to issuers and underwriters in offerings of registered and unregistered Exchange Act-ABS in connection with developing processes and protocols to provide the required information to comply with new Rule 15Ga–2, including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2. In the adopting release for Form ABS–15G, the Commission estimated that 270 unique securitizers would be required to file the form.[1068] The Commission preliminarily estimates that each securitizer would require approximately 100 hours to develop processes and protocols to comply with new Rule 15Ga–2 and to modify their existing Form ABS–15G processes and protocols to provide for the disclosure of the information required pursuant to Rule 15Ga–2, resulting in an industry-wide total of 27,000 hours.[1069] The Commission believes that this work would be done internally by issuers and underwriters.

The PRA burden assigned to Form ABS–15G reflects the cost of preparing and furnishing the form on EDGAR. As noted above, the proposed amendment to Form ABS–15G would require that it be furnished by issuers and underwriters in offerings of registered and unregistered Exchange Act-ABS. Consequently, the Commission preliminarily believes that the estimate of the annual hour burden for furnishing Form ABS–15G should be based on an estimate of the number of Exchange Act-ABS offerings per year. As noted above, in the PRA for the adoption of Rule 17g–7, the Commission estimated, on average, there would be approximately 2,067 Exchange Act-ABS offerings per year.[1070] In addition, the Commission preliminarily estimates that an issuer or underwriter would spend approximately one hour completing and submitting Form ABS–15G for purposes of meeting the requirement in Rule 15Ga–2. The Commission bases this preliminary estimate on the fact that Form ABS–15G would elicit much less information when used solely for the purpose of complying with proposed new Rule 15Ga–2. In addition, the information required in the form could be drawn directly from the due diligence reports the Commission expects providers of third-party due diligence services generate with respect to their performance of due diligence services. Therefore, the Commission preliminarily estimates that the industry-wide annual hour burden resulting from proposed new Rule 15Ga–2 and the amendments to Form ABS–15G would be approximately 2,067 hours.[1071] In addition, the Commission preliminarily believes that this work would be done internally by issuers and underwriters of Exchange Act-ABS.

To avoid duplicative disclosure, however, the Commission notes that an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7. The Commission anticipates that issuers and underwriters subject to this proposed requirement likely will seek to obtain such representations from the NRSROs engaged to produce credit ratings for Exchange Act-ABS. Consequently, the PRA burden for issuers and underwriters may be reduced substantially. However, to be conservative, the Commission preliminarily allocates the PRA burden for complying with proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G to the issuers and underwriters.

In addition, the Commission also is proposing to permit issuers of municipal Exchange Act-ABS, or underwriters in such offerings, to provide the information required by Form ABS–15G on EMMA. The Commission believes this would limit the PRA burden on issuers and underwriters of municipal Exchange Act-ABS subject to the proposed rule, as well as provide the disclosure for investors in the same location as other disclosures regarding municipal Exchange Act-ABS.

For the foregoing reasons, the Commission preliminarily estimates that proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G would result in a total industry-wide one-time hour burden of approximately 27,000 hours and a total industry-wide annual hour burden of approximately 2,067 hours.

10. Proposed Amendments to Regulation S–T

The Commission is proposing that certain Form NRSRO submissions and all Rule 17g–3 annual report submissions be submitted to the Commission using the EDGAR system. In order to implement this requirement, the Commission is proposing amendments to Rule 101 of Regulation S–T to require the electronic submission using the EDGAR system of Form NRSRO pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports pursuant to Rule 17g–3.[1072] The Commission also is proposing to amend Rule 201 of Regulation S–T, which governs temporary hardship exemptions from electronic filing, to make this exemption unavailable for NRSRO submissions.[1073]

[1068] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4506 (Jan. 26, 2011).

[1069] 270 unique securitizers × 100 hours = 27,000 hours. This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set up a system to make the disclosures required by Form ABS–15G as originally adopted by the Commission. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011). The Commission, however, believes that the hour burden for amending existing Form ABS–15G processes and protocols will be significantly lower than the estimate of 850 hours used to initially develop those processes and protocols.

[1070] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011). As noted above, issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, as discussed in Section II.H of this release, the Commission preliminarily believes that providers of third-party due diligence services are used primarily for RMBS transactions. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS. This also makes the Commission's estimates more conservative.

[1071] 2,067 Exchange Act-ABS transactions × 1 hour = 2,067 hours.

[1072] *See* proposed amendment of Rule 101 of Regulation S–T (17 CFR 231.101); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[1073] *See* proposed amendment of Rule 201 of Regulation S–T (17 CFR 231.201); *see also* Section II.L of this release for a more detailed discussion of this proposal.

The Commission is proposing new Rule 15Ga–2, which would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter.[1074]

OMB requires the Commission to assign a burden of one hour to Regulation S–T and to indicate that the Regulation has one respondent so that the automated OMB system will be able to handle approval of the Regulation. OMB has already approved a burden of one hour for one respondent to the Regulation.

11. Form ID

The Commission expects that NRSROs would need to file a Form ID with the Commission in order to gain access to the EDGAR system. Form ID is used to request the assignment of access codes to make submissions on EDGAR. The current OMB approved hour burden for Form ID is 15 minutes per respondent.[1075] Thus, the Commission estimates that the total one-time hour burden resulting from filing Form ID would be approximately 2.5 hours.[1076]

The Commission preliminarily believes that the issuers and underwriters of Exchange Act-ABS that would need to furnish Form ABS–15G to the Commission through the EDGAR system pursuant to proposed new Rule 15Ga–2 already have access to the EDGAR system because, for example, they need such access for the purpose of Rule 15Ga–1.

12. Total Paperwork Burdens

Based on the foregoing, the Commission estimates that the total recordkeeping burden for NRSRO respondents resulting from the proposed rule amendments and proposed new rules would be approximately 77,150 industry-wide one-time hours, $7,160,000 industry-wide external one-time costs, 741,140 industry-wide annual hours, and $552,000 industry-wide external annual costs.

Based on the foregoing, the Commission estimates that the total recordkeeping burden for respondents that are providers of third-party due diligence services resulting from the rule amendments and proposed new rules would be approximately 3,000 industry-wide one-time hours, $300,000 industry-wide external one-time costs, and 1,034 industry-wide annual hours.

Based on the foregoing, the Commission estimates that the total recordkeeping burden for issuer and underwriter respondents resulting from the rule amendments and proposed new rules would be approximately 27,000 industry-wide one-time hours and 2,067 industry-wide annual hours.

E. Collection of Information Is Mandatory

The collections of information pursuant to the proposed amendments and new rules are mandatory, as applicable, for NRSROs, providers of third-party due diligence services, and issuers and underwriters.

F. Confidentiality

Other than information for which an NRSRO, provider of third-party due diligence services, or issuer or underwriter 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 FOIA, the collection of information requirements resulting from the proposed amendments and new rules would not be confidential and would be publicly available.[1077]

G. Retention Period of Recordkeeping Requirements

All records an NRSRO is required to retain under Rule 17g–3 (including records that would need to be made or received by an NRSRO under the proposed amendments and new rules) must be retained for three years after the record is made or retained.[1078]

The Dodd-Frank Act did not establish record retention requirements for providers of third-party due diligence services.

The records issuers and underwriters are required to make and furnish to the Commission pursuant to the requirements in proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G would be mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the collections of information.

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 requirements are necessary for the performance of the functions of the Commission, including whether the information shall have practical utility;

2. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information requirements;

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 the collection of information requirements 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. S7–18–11. 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. S7–18–11, 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.

V. Economic Analysis

The Commission is sensitive to the costs imposed by its rules. To the extent possible, the discussion below focuses on the benefits and costs of the decisions made by the Commission to fulfill the mandates of the Dodd-Frank Act within its permitted discretion, rather than the benefits and costs of the mandates of the Dodd-Frank Act itself. However, as discussed below, to the extent that the Commission exercises discretion in implementing the provisions of the Dodd-Frank Act, the benefits and costs arising from the Commission's exercise of its discretion and the benefits and costs arising directly from the requirements of the Dodd-Frank Act are not entirely separable. Accordingly, where the

[1074] *See* proposed new Rule 15Ga–2 and proposed amendments to Form ABS–15G; *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[1075] *See* Form ID (OMB Number 3235–0328).

[1076] 10 NRSROs × 15 minutes = 150 minutes; 150 minutes/60 minutes = 2.5 hours.

[1077] *See* 15 U.S.C. 552 *et seq.*

[1078] *See* 17 CFR 240.17g–2(a), (b), and (c).

Commission believes that it has exercised some discretion in implementing the Dodd-Frank Act, hour burden estimates and dollar cost estimates in the above PRA analysis are included in full below, even where a portion—in most cases, the significantly greater portion—of the anticipated costs are attributable to the rulemaking mandates of the Dodd-Frank Act and not the exercise of the Commission's discretion in how to implement those requirements.[1079] Where the Commission believes, however, that it has not exercised discretion in implementing the rulemaking mandates of the Dodd-Frank Act and that any anticipated benefits and costs are *entirely* attributable to those mandates, those anticipated benefits and costs are not addressed in the discussion below. Finally, as used below, the term "incremental costs" refers to costs attributable to the exercise of the Commission's rulemaking discretion that are in addition to costs attributable to the rulemaking mandates of the Dodd-Frank Act.

In addition, the Commission notes that Section 3(f) of the Exchange Act 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.[1080] Furthermore, Section 23(a)(2) of the Exchange Act requires the Commission, when issuing rules under the Exchange Act, to consider the impact such rules would have on competition.[1081] Section 23(a)(2) 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.[1082] The Commission's analysis under these requirements as applied to the proposed amendments to existing rules and proposed new rules is included below in the discussions of the benefits and the costs of the proposals where appropriate. In this regard, the Commission's analysis focuses on the discretionary component of the Commission's proposals and the incremental costs resulting from that discretion.

Unless otherwise noted, the total one-time and annual cost estimates per NRSRO for PRA purposes as used in this section are averages across all types of NRSROs that would be subject to the proposed amendments and new rules. The NRSROs vary, in terms of size and complexity, from small entities that employ less than 20 credit analysts to complex global organizations that employ over a thousand credit analysts.[1083] Given the variance in size between the largest NRSROs and the smallest NRSROs, the cost estimates, as averages across all NRSROs, are skewed higher because the largest firms currently dominate in terms of size and the volume of credit rating activities.[1084]

The Commission's estimates of the benefits and costs of the proposals, as well as the anticipated effects on efficiency, competition and capital formation, are described below. The Commission recognizes that there may be benefits and costs resulting from the proposals that are not required to be described or otherwise identified below. The Commission generally requests that commenters identify and describe any such benefits and costs.

A. Internal Control Structure

Section 932(a)(2)(B) of the Dodd-Frank Act added paragraph (3) to Section 15E(c) of the Exchange Act.[1085] Section 15E(c)(3)(A) requires an NRSRO to "establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings, taking into consideration such factors as the Commission may prescribe by rule."[1086] Section 15E(c)(3)(B) of the Exchange Act provides that the Commission shall prescribe rules requiring an NRSRO to submit an annual internal controls report to the Commission, which shall contain: (1) A description of the responsibility of management in establishing and maintaining an effective internal control structure; (2) an assessment of the effectiveness of the internal control structure; and (3) the attestation of the CEO or equivalent individual.[1087] The Commission proposes to implement this rulemaking by: (1) Adding a new paragraph (b)(12) to Rule 17g–2;[1088] and (2) amending paragraphs (a) and (b) of Rule 17g–3.[1089]

Proposed new paragraph (b)(12) of Rule 17g–2 would identify the internal control structure an NRSRO, among other things, must document pursuant to Section 15E(c)(3)(A) of the Exchange Act as a record that must be retained.[1090] As a result, the various retention and production requirements of paragraphs (c), (d), (e), and (f) of Rule 17g–2 in its current form would apply to the documented internal control structure.[1091]

Proposed new paragraph (a)(7) of Rule 17g–3 would require an NRSRO to include with the other reports required under that rule a report regarding the NRSRO's internal control structure established pursuant to Section 15E(c)(3)(A) of the Exchange Act.[1092] The proposed amendment would mirror the text of Section 15E(c)(3)(B) of the Exchange Act by requiring that the report contain: (1) A description of the responsibility of management in establishing and maintaining an effective internal control structure; and (2) an assessment by management of the effectiveness of the internal control structure.[1093] The Commission's proposed amendment to paragraph (b) of Rule 17g–3 would require that the NRSRO's CEO, or, if the firm does not have a CEO, an individual performing similar functions, provide a signed statement that would need to be attached to the report.[1094] The CEO or other individual would need to state, among other things, that the report fairly presents, in all material respects, a description of the responsibility of management in establishing and

[1079] For purposes of this economic analysis, the Commission's salary figures are from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1080] *See* 15 U.S.C. 78c(f).

[1081] *See* 15 U.S.C. 78w(a)(2).

[1082] *See id.*

[1083] *See, e.g., Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (January 2011), pp. 4–9.

[1084] As discussed above in Section IV.D of this release, based on data collected from the NRSROs in their Form NRSROs and Rule 17g–3 annual reports, the Commission has calculated an HHI number using the number credit ratings outstanding per NRSRO and that number is 3,495, which is equivalent to there being approximately 2.86 equally sized firms. The HHI using earnings reported by NRSROs in the Rule 17g–3 annual reports is 3,926, which the equivalent of 2.55 equally sized firms.

[1085] *See* Public Law 111–203 § 932(a)(2)(B) and 15 U.S.C. 78o–7(c)(3)(A); *see also* Section II.A.1 of this release for a more detailed discussion of this provision.

[1086] *Id.*

[1087] *See* 15 U.S.C. 78o–7(c)(3)(B)(i)–(iii).

[1088] *See* proposed new paragraph (b)(12) to Rule 17g–2; *see also* Section II.A.2 of this release for a more detailed discussion of this proposal.

[1089] *See* proposed new paragraphs (a)(7) and of Rule 17g–3; *see also* Section II.A.3 of this release for a for a more detailed discussion of these proposals.

[1090] *See* proposed new paragraph (b)(12) of Rule 17g–2.

[1091] *See* 17 CFR 240.17g–2(c), (d), (e) and (f).

[1092] *See* proposed new paragraph (a)(7) of Rule 17g–3.

[1093] *Compare* 15 U.S.C. 78o–7(c)(3)(B)(i) and (ii) and proposed new paragraphs (a)(7)(i) and (ii) of Rule 17g–3.

[1094] *See* proposed amendments to paragraph (b) of Rule 17g–3.

maintaining an effective internal control structure and an assessment of the effectiveness of the internal control structure.

1. Benefits

Section 15E(c)(3)(A) of the Exchange Act requires an NRSRO to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.[1095] The Commission proposes to further implement this provision by applying the record retention and production requirements of Rule 17g–2 to the documented internal control structure by adding new paragraph (b)(12).[1096] Recordkeeping rules such as Rule 17g–2 have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[1097] Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with applicable securities laws, including the provisions of Section 15E of the Exchange Act and the rules thereunder.[1098] The proposed amendment to Rule 17g–2 is designed to assist the Commission in monitoring an NRSRO's compliance with the requirement in Section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings.

The Commission preliminarily believes that implementing the internal control structure reporting requirement through an amendment to Rule 17g–3 would facilitate the Commission's oversight of NRSROs. First, it would assist the Commission in monitoring an NRSRO's compliance with the requirement in Section 15E(c)(3)(A) of the Exchange Act to establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings. Second, it would specify the format, manner, and timeframe in which the report must be submitted to the Commission, thereby facilitating the Commission's processing of the report. Furthermore, the Commission preliminarily believes that proposed amendments to Rules 17g–2 and 17g–3 would provide an efficient process for NRSROs by allowing them to file the internal control report with the other annual reports required under Rule 17g–3.

2. Costs

The Commission preliminarily estimates that, although the costs resulting from the proposed amendment to Rule 17g–2, discussed below, would largely be attributable to the Commission's discretionary rulemaking, those incremental costs would be minimal. An NRSRO already should have recordkeeping and control systems in place to comply with the existing requirements in Rule 17g–2 to make and retain or to retain documents listed in the rule.

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to the amendments to Rule 17g–3 would also impose minimal incremental costs. The Commission preliminarily estimates that the costs resulting from the proposed amendments to Rule 17g–3 would largely be attributable to the rulemaking mandated by the Dodd-Frank Act.[1099]

An NRSRO already should have control systems in place to comply with the existing requirements of Rule 17g–3. Consequently, the Commission preliminarily estimates that the internal hour burden associated with the first filing of the internal control report would not be materially different than the hour burden associated with filing subsequent reports (though the time spent on subsequent reports may decrease incrementally over time as the NRSRO gains experience with the requirement). The Commission, however, preliminarily believes that an NRSRO likely would engage outside counsel to analyze the requirements for the report and assist in drafting and reviewing the first report, given that it must be signed by the NRSRO's CEO or an individual performing a similar function. The time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO.

In addition, as discussed above in Section IV.D.4 of this release with respect to the PRA, the Commission preliminarily believes an NRSRO likely would continue to engage outside counsel to assist in the process of preparing the report on an annual basis and that the time an outside attorney would spend on this work would depend on the size and complexity of the NRSRO but in all cases be less than time spent on the first report.

In sum, limiting the analysis to the elements of the proposals over which the Commission exercised discretion, the Commission acknowledges that the proposals would entail some compliance burdens for NRSROs. Some of the compliance effects are estimated for the industry in Sections Section IV.D.3 and Section IV.D.4 as $600,000 for the use of outside counsel and 1,550 internal burden hours for creating and retaining documents and complying with management's assessment of the internal control structure. However, the Commission preliminarily believes these compliance effects would result largely from the rulemaking mandated by the Dodd-Frank Act rather than the Commission's exercise of discretion.

The Commission preliminarily believes that the incremental cost resulting from the proposed amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new paragraph (b)(12) of Rule 17g–2 and proposed new paragraphs (a)(7) and (b)(2) of Rule 17g–3.

B. Conflicts of Interest Relating to Sales and Marketing

Section 932(a)(4) of the Dodd-Frank Act added new paragraph (3) to Section 15E(h) of the Exchange Act.[1100] Section 15E(h)(3)(A) of the Exchange Act provides that the Commission shall issue rules to prevent the sales and marketing considerations of an NRSRO from influencing the production of credit ratings by the NRSRO.[1101] The Commission is proposing to implement this provision by identifying a new conflict of interest in paragraph (c) of Rule 17g–5.[1102] The existing requirements in paragraph (c) prohibit a person within an NRSRO (which

[1095] *See* 15 U.S.C. 78o–7(c)(3)(A).

[1096] *See* 17 CFR 240.17g–2(c), (d), (e) and (f).

[1097] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007).

[1098] *Id.*

[1099] *Compare* 15 U.S.C. 78o–7(c)(3)(B)(i) and (ii) with proposed new paragraphs (a)(7)(i), (a)(7)(ii), and (b)(2) of Rule 17g–3.

[1100] Public Law 111–203 § 932(a)(4) and 15 U.S.C. 78o–7(h)(3).

[1101] 15 U.S.C. 78o–7(h)(3)(A).

[1102] *See* proposed new paragraph (c)(8) of Rule 17g–5; *see also* Section II.B.1 of this release for a more detailed discussion of this proposal.

includes the NRSRO)[1103] from having any of the conflicts of interest identified in the paragraph under all circumstances.[1104] Proposed new paragraph (c)(8) of Rule 17g–5 would identify a new absolute prohibition: an NRSRO issuing or maintaining a credit rating where a person within the NRSRO who participates in the sales or marketing of a product or service of the NRSRO or a product or service of a person associated with the NRSRO also participates in determining or monitoring the credit rating or developing or approving procedures or methodologies used for determining the credit rating, including qualitative or quantitative models.[1105]

Section 15E(h)(3)(B) of the Exchange Act provides that the Commission's rules must contain two additional provisions.[1106] First, Section 15E(h)(3)(B)(i) requires that the Commission's rules shall provide for exceptions for small NRSROs with respect to which the Commission determines that the separation of the production of ratings and sales and marketing activities is not appropriate.[1107] To implement this provision, the Commission is proposing to amend Rule 17g–5 by adding a new paragraph (f).[1108] Proposed paragraph (f) would provide a mechanism for a small NRSRO to apply in writing for an exemption from the absolute prohibition proposed in new paragraph (c)(8). In particular, proposed new paragraph (f) of Rule 17g–5 would provide that upon written application by an NRSRO, the Commission may exempt, either conditionally or unconditionally or on specified terms and conditions, such NRSRO from the provisions of paragraph (c)(8) of Rule 17g–5 if the Commission finds that due to the small size of the NRSRO it is not appropriate to require the separation within the NRSRO of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.[1109]

Second, Section 15E(h)(3)(B)(ii) requires that the Commission's rules shall provide for the suspension or revocation of the registration of an NRSRO if the Commission finds, on the record, after notice and opportunity for a hearing, that the NRSRO has committed a violation of a rule issued under Section 15E(h) of the Exchange Act; and (2) the violation affected a rating.[1110] The Commission proposes to implement this provision by adding new paragraph (g) of Rule 17g–5.[1111] This paragraph would provide that in a proceeding pursuant to Section 15E(d) or Section 21C of the Exchange Act, the Commission shall suspend or revoke the registration of an NRSRO if the Commission finds in such proceeding that the NRSRO has violated a rule issued under Section 15E(h) of the Exchange Act, the violation affected a rating, and that suspension or revocation is necessary for the protection of investors and in the public interest.

1. Benefits

The Commission preliminarily believes that the proposed new absolute prohibition in proposed paragraph (c)(8) of Rule 17g–5 would provide benefits to investors by mitigating the potential that undue influences based on sales and marketing considerations could impact the objectivity of the NRSRO's credit rating process.[1112] As discussed above in Section II.B.1 of this release, Commission staff found as part of its 2007–2008 examination of the activities of the three largest NRSROs in rating asset-backed securities linked to subprime mortgages that it appeared that marketing personnel discussed with other employees, including those responsible for credit rating criteria development, business concerns they had related to those criteria.[1113] The rule proposal would be designed to insulate individuals within the NRSRO responsible for determining credit ratings from such pressures. In addition, the bright line on prohibited behavior is likely to allow the company to effectively comply with the proposed rules. The Commission believes that this could benefit investors by increasing the integrity of credit ratings and the procedures and methodologies used to determine credit ratings.

With respect to the proposal for the suspension or revocation of the registration of an NRSRO after a violation of a rule, the Commission preliminarily believes that it would provide the Commission with more flexibility in determining appropriate sanctions for violations of the securities laws. This could act as a deterrent against violations by NRSROs and could motivate them to strengthen their internal controls to manage conflicts of interest.

The Commission preliminarily believes that codifying these requirements mandated by the Dodd-Frank Act in Rule 17g–5 may promote efficiency. NRSROs should already have developed a system of controls to comply with the existing requirements relating to conflicts of interest that are codified in Rule 17g–5. In addition, the Commission believes proposed paragraph (g) may promote efficiency by incorporating existing processes for sanctioning NRSROs (*i.e.,* those provided for Sections 15E(d) or Section 21C of the Exchange Act).

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to the proposed amendments to Rule 17g–5 would impose minimal incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from the proposed amendments to Rule 17g–5 would be attributable largely to the rulemaking mandated by Dodd-Frank Act.[1114]

The Commission notes that, when it adopted three new absolutely prohibited conflicts by amending paragraph (c) of Rule 17g–5 in 2009, the Commission provided estimates of one-time and annual compliance costs for NRSROs resulting from the amendments.[1115] Moreover, one of those amendments resulted in an absolute prohibition that is similar to the Commission's proposed new absolute prohibition in that it prohibits an NRSRO from issuing or maintaining a credit rating where the fee paid for the rating was negotiated, discussed, or arranged by a person within the NRSRO who has responsibility for participating in determining credit ratings or for

[1103] *See* paragraph (d) of Rule 17g–5 defining "person within an NRSRO" for purposes of the rule. 17 CFR 240.17g–5(d).

[1104] *See* 17 CFR 240.17g–5(c)(1)–(7).

[1105] *See* proposed new paragraph (c)(8) of Rule 17g–5.

[1106] 15 U.S.C. 78o–7(h)(3)(B)(i) and (ii).

[1107] 15 U.S.C. 78o–7(h)(3)(B)(i).

[1108] *See* proposed new paragraph (f) of Rule 17g–5; *see also* Section II.B.2 of this release for a more detailed discussion of this proposal.

[1109] *See* proposed new paragraph (f) of Rule 17g–5.

[1110] 15 U.S.C. 78o–7(h)(3)(B)(ii).

[1111] *See* proposed new paragraph (g) of Rule 17g–5; *see also* Section II.B.3 of this release for a more detailed discussion of this proposal.

[1112] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33598–33599, 33613 (June 18, 2007) (discussing objectives and benefits of paragraph (c) of Rule 17g–5 when it was adopted); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6465–6469, 6474–6475 (February 9, 2009) (discussing objectives and benefits of paragraph (c) of Rule 17g–5 when it was amended).

[1113] *See Summary Report of Issues Identified in the Commission Staff's Examination of Select Credit Rating Agencies,* Commission (July 2008), pp. 25–26.

[1114] *Compare* 15 U.S.C. 78o–7(h)(3)(A), (B)(i), and (B)(ii) with proposed new paragraphs (c)(8), (f), and (g) of Rule 17g–5.

[1115] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6479 (February 9, 2009).

developing or approving procedures or methodologies used for determining credit ratings, including qualitative and quantitative models.[1116] With respect to the 2009 amendments, the Commission estimated that the costs to the three largest NRSROs as a result of the three new prohibited conflicts would be approximately $5,442,100 per firm in one-time costs and $1,563,800 per firm in annual costs.[1117] In addition, the Commission estimated that the costs to the seven smaller NRSROs would be approximately $47,600 per firm in one-time costs and $13,760 per firm in annual costs.[1118] The Commission preliminarily believes that the compliance cost for the new absolute prohibition proposed in this release would be proportionally less than the estimates provided above for the three 2009 prohibitions. The Commission also preliminarily believes that granting an exemption from the proposed new absolute prohibition for a small NRSRO that applied in writing for such exemption could reduce potential costs for a smaller NRSRO for which the complete separation of sales and marketing activities from the analytical function would not be appropriate.

The Commission therefore preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new paragraphs (c)(8), (f), and (g) of Rule 17g–5.

C. "Look-Back" Review

Section 932(a)(4) of the Dodd-Frank Act amended Section 15E(h) of the Exchange Act to add a new paragraph (4).[1119] The Commission is proposing to implement the rulemaking required in Section 15E(h)(4)(A)(ii) of the Exchange Act through proposed paragraph (c) of new Rule 17g–8.[1120] Proposed paragraph (c) would require that the policies and procedures the NRSRO establishes, maintains, and enforces pursuant to Section 15E(h)(4)(A) of the Exchange Act must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure the NRSRO will: (1) Immediately place the credit rating on credit watch; (2) promptly determine whether the credit rating must be revised so it no longer is influenced by a conflict of interest and is solely the product of the NRSRO's documented procedures and methodologies for determining credit ratings; and (3) promptly publish a revised credit rating, if appropriate, or affirm the credit rating if appropriate.[1121]

In addition, the Commission proposes adding paragraph (a)(9) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Exchange Act and proposed paragraph (c) of new Rule 17g–8 as a record an NRSRO must make and retain.[1122] As a result, the policies and procedures would need to be documented in writing and subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[1123]

1. Benefits

The Commission preliminarily believes that the proposed look-back review provisions would provide three primary benefits. First, they would implement the rulemaking mandate in a way that would require an NRSRO to notify users of its credit ratings that a prior rating action was subject to a conflict and to review whether the credit rating should be revised. This would help ensure as quickly as possible that the credit rating assigned to the obligor, security, or money market instrument is solely a product of the NRSRO's procedures and methodologies for determining credit ratings. In addition, by prescribing the steps an NRSRO must take to remove the uncertainty surrounding the credit rating, the rule proposal could limit the potential that investors and other users of credit ratings might make investment or other credit based decisions based on incomplete, biased or inaccurate information.

Second, the Commission preliminarily believes that the proposal could operate within the existing framework of an NRSRO's policies and procedures for taking rating actions and procedures and methodologies for determining credit ratings. Placing a rated obligor, security, or money market instrument on credit watch and subsequently affirming or revising (*i.e.,* upgrading or downgrading the rating) are among the rating actions NRSRO's commonly take with respect to their credit ratings. In addition, in terms of revising the conflicted credit rating, the proposal would rely on an NRSRO's policies and procedures for determining credit ratings and not require revisions that are contrary to those policies and procedures. The Commission preliminarily believes that the approach in proposed paragraph (c) of new Rule 17g–8 appropriately avoids regulating the substance of credit ratings or the procedures and methodologies an NRSRO uses to determine credit ratings but, at the same time, requires an NRSRO to have procedures reasonably designed to ensure that it promptly addresses a credit rating that is subject to a conflict of interest.[1124]

Third, the Commission preliminarily believes that having these policies and procedures in writing would promote better understanding of them among the individuals within the NRSRO and, therefore, promote compliance with the policies and procedures. In addition, the record retention requirements would facilitate Commission oversight of NRSROs. In this regard, recordkeeping rules such as Rule 17g–2 have proven

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[1116] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6479 (February 9, 2009) and 17 CFR 240.17g–5(c)(6).

[1117] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6479 (February 9, 2009).

[1118] *Id.*

[1119] *See* Public Law 111–203 § 932(a)(4) and 15 U.S.C. 78o–7(h)(4).

[1120] *See* proposed paragraph (c) of new Rule 17g–8; *see also* Section II.C.1 of this release for a more detailed discussion of this proposal. Sections 15E(h)(4)(A)(i) and (ii) of the Exchange Act require an NRSRO to establish, maintain, and enforce policies and procedures reasonably designed to ensure that, in any case in which an employee of a person subject to a credit rating of the NRSRO or the issuer, underwriter, or sponsor of a security or money market instrument subject to a credit rating of the NRSRO, was employed by the NRSRO and participated in any capacity in determining credit ratings for the person or the securities or money market instruments during the 1-year period preceding the date an action was taken with respect to the credit rating, the NRSRO shall: (1) Conduct a review to determine whether any conflicts of interest of the employee influenced the credit rating; and (2) take action to revise the rating if appropriate, in accordance with such rules as the Commission shall prescribe. *See* 15 U.S.C. 78o–7(h)(4)(A)(i) and (ii).

[1121] *See* proposed paragraphs (c)(1), (2) and (3) of new Rule 17g–8.

[1122] *See* proposed new paragraph (a)(9) to Rule 17g–2; *see also* Section II.C.2 of this release for a more detailed discussion of this proposal.

[1123] *See* 17 CFR 240.17g–2(c)–(f).

[1124] The Commission also notes an NRSRO would violate Section 15E(h) of the Exchange Act (15 U.S.C. 78o–7(h)) and Rule 17g–5, among other rules, if it continued to assign an obligor, security, or money, market instrument a credit rating that, absent the undue influence of the conflict of interest, would be different because the NRSRO could not be deemed to have policies and procedures reasonably designed to address and manage conflicts of interest that can arise from its business under such a circumstance. *See* 15 U.S.C. 78o–7(h) and 17 CFR 17g–5.

integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[1125]

The Commission preliminarily believes that the proposed implementation of Section 15E(h)(4)(A)(ii) of the Exchange Act as mandated by the Dodd-Frank Act may promote efficiency. As noted above, the proposal would be designed to work within the existing processes NRSROs have for taking rating actions and would not interfere with their procedures and methodologies for determining credit ratings.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to proposed paragraph (c) of new Rule 17g–8 would impose minimal incremental costs. The Commission preliminarily estimates that the costs resulting from proposed paragraph (c) of new Rule 17g–8 would be attributable largely to the rulemaking mandated by Dodd-Frank Act.[1126] As discussed above in Section IV.D.6, the Commission preliminarily estimates that for PRA purposes, the average annual cost to each NRSRO would be approximately $7,000, resulting in an industry-wide annual cost of approximately $70,000.[1127]

The Commission preliminarily estimates that the costs resulting from the proposed amendment to Rule 17g–2 discussed below largely would be attributable to the Commission's discretionary rulemaking. As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminary believes applying the recordkeeping requirements of Rule 17g–2 to five new types of records would result in one-time and annual hour burdens for NRSROs in connection with updating their record retention policies and procedures to account for and retain these new records. Also, as discussed above in Section IV.D.3 of this release with respect to the PRA, based on staff experience, the Commission preliminarily estimates that the additional one-time hour burden for each NRSRO to update its record retention policies and procedures to account for the new records that would need to be retained under proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 would be 20 hours. Based on that estimate, the Commission preliminary believes that the one-time hour burden resulting from proposed new paragraph (a)(9) of Rule 17g–2 would be approximately 4 hours per NRSRO, resulting in an industry-wide hour burden of approximately 40 hours.[1128] As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminarily estimates it would take an average of approximately one hour each year for an NRSRO to retain updated versions of the internal control structure, resulting in an annual industry-wide hour burden of 10 hours.[1129]

The Commission believes that in addition to the compliance costs calculated above for PRA purposes, there could be other potential economic effects resulting from the proposed release that are hard to quantify. For example, former subscribers, who bought on the basis of the original rating but who no longer subscribe to the rating service, would not be notified when a rating has been revised.

For the foregoing reasons, the Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed paragraph (c) of new Rule 17g–8 and proposed new paragraph (a)(9) of Rule 17g–2.

D. Fines and Other Penalties

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new subsection (p), which contains four paragraphs: (1), (2), (3), and (4).[1130] Section 15E(p)(4)(A) provides that the Commission shall establish, by rule, fines and other penalties applicable to any NRSRO that violates the requirements of Section 15E of the Exchange Act and the rules under the Exchange Act.[1131] The Commission proposes to amend the instructions to Form NRSRO by adding new Instruction A.10.[1132] This new instruction would provide notice to credit rating agencies applying for registration and NRSROs that an NRSRO is subject to the fine and penalty provisions, and other available sanctions contained in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act for violations of the securities laws.[1133]

1. Benefits

The Commission preliminarily believes this amendment to Form NRSRO would benefit credit rating agencies applying for registration as NRSROs and NRSROs because it would notify them of the potential consequences of violating provisions of the Exchange Act and Commission rules. The Commission also believes that this notification could potentially cause the NRSROs to enhance their compliance and compliance procedures, which would benefit investors and other users of credit ratings. In addition, the Commission believes implementing the rule in this manner would create efficiencies by relying on existing authority to seek fines, penalties, and other available sanctions contained in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act for violations of the securities laws.[1134]

2. Costs

The Commission preliminarily estimates that the proposed amendment to the instructions to Form NRSRO would not result in additional regulatory obligations for NRSROs. Consequently, the Commission preliminarily believes it would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the benefits and costs associated with the proposal to amend the instructions to Form NRSRO by adding new Instruction A.10.

E. Proposed Enhancements to Disclosures of Performance Statistics

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new subsection (q), which contains paragraphs (1) and (2).[1135] Section 15E(q)(1) provides that

[1125] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007).

[1126] *Compare* 15 U.S.C. 78o–7(h)(4)(A) with proposed paragraph (c) of new Rule 17g–8.

[1128] 20 hours/5 new required records = 4 hours; 10 NRSROs × 4 hours = 40 hours.

[1129] 10 NRSROs × 1 hour = 10 hours.

[1130] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(p)(1)–(4).

[1131] *See* 15 U.S.C. 78o–7(p)(4)(A).

[1132] *See* proposed new Instruction A.10 to Form NRSRO; *see also* Section II.D of this release for a more detailed discussion of this proposal.

[1133] *See* 15 U.S.C. 78o–7, 15 U.S.C. 78u, 15 U.S.C. 78u–1, 15 U.S.C. 78u–2, 15 U.S.C. 78u–3 and 15 U.S.C. 78ff, respectively.

[1134] *Id.*

[1135] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(q)(1) and (2).

the Commission shall, by rule, require each NRSRO to publicly disclose information on the initial credit ratings determined by the NRSRO for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different NRSROs.[1136] Section 15E(q)(2) provides that the Commission's rules shall require, at a minimum, disclosures that, among other things: (1) Are comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs;[1137] (2) are clear and informative for investors having a wide range of sophistication who use or might use credit ratings;[1138] (3) include performance information over a range of years and for a variety of types of credit ratings, including for credit ratings withdrawn by the NRSRO;[1139] and (4) are appropriate to the business model of an NRSRO.[1140]

The Commission proposes to implement the rulemaking mandated in Section 15E(q) of the Exchange Act, in part, by significantly enhancing the requirements applicable to NRSROs with respect to generating and disclosing performance statistics in Exhibit 1 of Form NRSRO.[1141] Among other things, the amendments would confine the disclosures in the Exhibit to transition and default rates and certain limited supplemental information.[1142] Moreover, the amendments would standardize the production and presentation of the transition and default rates.[1143] Specifically, the amendments would require the transition and default rates in Exhibit 1 to be produced using a "single cohort approach."[1144] Under this approach, an applicant and NRSRO, on an annual basis, would be required to compute how the credit ratings assigned to obligors, securities, and money market instruments in a particular class or subclass of credit rating outstanding on the date 1, 3, and 10 years prior to the most recent calendar year-end performed during those respective 1, 3, and 10-year time periods.[1145]

Under the amendments, the proposed new instructions would be divided into paragraphs (1), (2), (3), and (4), some of which would have subparagraphs.[1146] The proposed new paragraphs would contain specific instructions with respect to, among other things, how required information should be presented in the Exhibit (including the order of presentation) and how transition and default rates should be produced using a single cohort approach.[1147] As with all information that must be submitted in Form NRSRO and its Exhibits, applicants *and* NRSROs would be subject to these new requirements.[1148]

The Commission also is proposing implementing Section 15E(q)(2)(D) of the Exchange Act, which requires that the Commission's rules must require NRSROs to make its performance statistics freely available and disclose them on an easily accessible portion of its Web site, and in writing when requested, by amending paragraph (i) of Rule 17g–1.[1149] The amendment would require an NRSRO to make Form NRSRO and Exhibits 1 through 9 "freely available on an easily accessible portion of its Web site." The proposed amendment to paragraph (i) also would remove the option for an NRSRO to make its Form NRSRO publicly available "through another comparable, readily accessible means" as an alternative to Web site disclosure.

1. Benefits

Section 15E(q)(1) of the Exchange Act provides that the Commission shall, by rule, require each NRSRO to publicly disclose information on the initial credit ratings determined by the NRSRO for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different NRSROs.[1150] The Commission is proposing to implement this rulemaking mandate, in part, through amendments to the instructions for Exhibit 1 to Form NRSRO. The amendments would be designed to meet the goal in Section 15E(q)(1) that the information disclosed by NRSROs allows users of credit ratings to evaluate the accuracy of credit ratings and compare the performance of credit ratings by different NRSROs. In this regard, the amendments are designed to make disclosures simply presented, easy to understand, uniform in appearance, and comparable across NRSROs.[1151]

As the Commission stated when originally adopting Form NRSRO, the information provided in Exhibit 1 is an important indicator of the performance of an NRSRO in terms of its ability to assess the creditworthiness of issuers and obligors and, consequently, will be useful to users of credit ratings in evaluating an NRSRO.[1152] The performance statistics required to be disclosed in Exhibit 1 of Form NRSRO were designed to allow users of the credit ratings to compare the credit ratings quality of different NRSROs and, thereby, make it easier for users of credit ratings to compare the ratings performance of the NRSROs. The performance statistics also were designed to allow an NRSRO to demonstrate that it has a superior ratings methodology or competence and, thereby, attract clients. In doing so, the Commission believed, the performance statistics would therefore enhance competition in the credit ratings industry.[1153] The proposed amendments to the instructions to Exhibit 1 of Form NRSRO are designed to improve the utility of the required performance statistics disclosure to investors and other users of credit ratings and facilitate comparisons between

[1136] *See* 15 U.S.C. 78o–7(q)(1).

[1137] *See* 15 U.S.C. 78o–7(q)(2)(A).

[1138] *See* 15 U.S.C. 78o–7(q)(2)(B).

[1139] *See* 15 U.S.C. 78o–7(q)(2)(C).

[1140] *See* 15 U.S.C. 78o–7(q)(2)(E).

[1141] *See* proposed amendments to Instruction H to Form NRSRO (as it relates to Exhibit 1); *see also* Section II.E.1.a of this release for a more detailed discussion of this proposal.

[1142] *See* proposed amendments to the instructions for Exhibit 1.

[1143] *Id.*

[1144] *Id.*

[1145] *Id.*

[1146] *See* proposed paragraphs (1)–(4) of the instructions for Exhibit 1.

[1147] *Id.*

[1148] *See, e.g.,* 17 CFR 240.17g–1; *see also* Instructions A.1, B, C, D, E, and F to Form NRSRO.

[1149] A detailed discussion of this proposal is at Section II.E.1.b of this release.

[1150] 15 U.S.C. 78o–7(q)(1).

[1151] *See* Section 15E(q)(2)(A) of the Exchange Act, which provides that the disclosure of information about the performance of credit ratings should be comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs. 15 U.S.C. 78o–7(q)(2)(A). *See also* Section 15E(q)(2)(B) of the Exchange Act, which provides that the disclosure of information about the performance of credit ratings should be clear and informative for investors having a wide range of sophistication who use or might use credit ratings. 15 U.S.C. 78o–7(q)(2)(B).

[1152] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33574 (June 18, 2007); *see also Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6474 (Feb. 9, 2009) ("The amendments to the instructions to Exhibit 1 to Form NRSRO will require NRSROs to provide more detailed performance statistics and, thereby, make it easier for users of credit ratings to compare the performance of the NRSROs. In addition, these amendments will make it easier for an NRSRO to demonstrate that it has a superior ratings methodology or competence and, thereby, attract clients.").

[1153] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33612 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6474 (Feb. 9, 2009).

NRSROs, thereby amplifying this positive effect on competition.

In addition, the proposed amendments could improve the Commission's ability to carry out its oversight function for NRSRO which, in turn, would benefit investors. For example, the enhanced utility of the performance statistics provided in an applicant's initial application for registration and in an NRSRO's Form NRSRO could aid the Commission in, among other things, assessing whether the applicant or NRSRO has adequate financial and managerial resources to consistently produce credit ratings with integrity.[1154] Furthermore, the disclosure of the enhanced performance statistics in an applicant's initial application would allow the Commission staff to verify that the applicant, if granted registration, would publicly disclose the information in accordance with the proposed amendments to the Instructions for Exhibit 1.[1155]

In addition, the Commission preliminarily believes that applying the requirement to disclose Form NRSRO and Exhibits 1 through 9 on an "easily accessible" portion of the NRSRO's Web site would assist investors and other users of credit ratings by making it easier to locate a Form NRSRO. The Commission also believes that amending paragraph (i) to provide that Exhibit 1 be made freely available in writing when requested[1156] would benefit those investors who do not have access to the Internet.

The Commission preliminarily believes that enhancing the existing requirements in Exhibit 1 to Form NRSRO is an efficient means of implementing the rulemaking mandated through Section 15E(q) of the Exchange Act. An NRSRO already should have in place information technology systems to meet the existing requirements of the instructions for Exhibit 1 to Form NRSRO, which it could adjust to comply with the proposed new disclosure requirements.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion in proposing amendments to the instructions for Exhibit 1 of Form NRSRO would impose incremental costs. The Commission preliminarily estimates, however, that the costs discussed below would be attributable largely to the rulemaking mandated by the Dodd-Frank Act[1157] and that the incremental costs would be minimal.

An NRSRO should already have in place information technology systems to meet the existing requirements of the instructions to Exhibit 1 of Form NRSRO, which it could adjust to comply with the proposed new disclosure requirements. NRSROs are already subject to substantial performance statistic disclosure requirements, including the requirement to provide transition and default rates in Exhibit 1 for each class of credit rating for which they are registered and for 1, 3, and 10-year periods. The Commission preliminarily believes that NRSROs could use the internal information technology systems and expertise and other resources they currently devote to processing the information necessary to monitor credit ratings and calculate transitions and default statistics in order to program a system to comply with the proposed amendments to the Instructions for Exhibit 1.

At the same time, the Commission notes that under the proposed amendments, NRSROs would be required to adhere to specific requirements that may not follow their traditional practices for calculating and presenting transitions and default rates. Consequently, the Commission preliminarily estimates that the proposed amendments requiring standardized Transition/Default Matrices would result in one-time costs to program existing systems to create the Transition/Default Matrices that would be required under the proposed amendments and annual costs to comply with the requirement to update the transition and default rates in Exhibit 1.

As discussed above in Section IV.D.2, the Commission preliminarily believes that the one-time and annual hour burden estimates for implementing these changes should be based on the number of credit ratings outstanding. Based on the annual certifications submitted by the NRSROs for the 2009 calendar year-end, there were approximately 2,905,824 credit ratings outstanding across all 10 NRSROs.[1158] The Commission preliminarily estimates that the one-time industry-wide burden to establish systems to process the relevant information necessary to calculate the Transition/Default Matrices and make the necessary calculations would be an average of approximately 3 seconds per outstanding credit rating, resulting in a one-time industry-wide hour burden of approximately 2,420 hours.[1159]

The Commission preliminarily believes that the annual hours burden to comply with the proposed amendments to the Instructions for Exhibit 1 would be less than the one-time burden since the NRSROs would have established systems to process the necessary information to produce the required Transition/Default Matrices. As discussed above in Section IV.D.2 of this release with respect to the PRA, the Commission preliminarily estimates that the annual industry-wide hour burden to calculate the Transition/Default Matrices would be an average of approximately 1.5 seconds per outstanding credit rating, resulting in an industry-wide annual hour burden of approximately 1,210 hours.[1160]

As discussed above in Section IV.D.1 of this release with respect to the PRA, the Commission preliminarily estimates that there would be a minimal one-time hour burden attributable to requiring that an NRSRO make Form NRSRO and Exhibits 1 through 9 freely available on an easily accessible portion of its corporate Internet Web site and removing the option for an NRSRO to make its Form NRSRO and Exhibits 1 through 9 available through another comparable, readily accessible means. Currently, all NRSROs make Form NRSRO and Exhibits 1 through 9 available on their corporate Internet Web sites.[1161] However, the Commission preliminarily believes that

[1154] *See, e.g.,* 15 U.S.C. 78o–7(a)(2)(C) (setting forth grounds to deny an initial application) and 15 U.S.C. 78o–7(d)(1)(E) and (d)(2) (setting forth grounds to sanction an NRSRO, including revoking the NRSRO's registration); *see also Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33612 (June 18, 2007) ("Form NRSRO requires that a credit rating agency provide information required under Section 15E(a)(1)(B) of the Exchange Act and certain additional information. The additional information will assist the Commission in making the assessment regarding financial and managerial resources required under Section 15E(a)(2)(C)(2)(ii)(I) of the Exchange Act.").

[1155] As indicated above, paragraph (i) requires an NRSRO to make Form NRSRO and Exhibits 1 through 9 publicly available within 10 business days of being granted an initial registration. *See* 17 CFR 240.17g–1(i). In addition, the public disclosure of Form NRSRO and Exhibits 1 through 9 could be accelerated if the Commission adopts the proposal that this information be filed through the EDGAR system upon registration.

[1156] *See* proposed amendments to paragraph (i) of Rule 17g–1.

[1157] *Compare* 15 U.S.C. 78o–7(q) with the proposed amendments to the instructions for Exhibit 1 to Form NRSRO; *see also* GAO Report 10–782, pp. 27–40 (indicating the current requirements for disclosing performance statistics in Exhibit 1 to Form NRSRO may not achieve the objectives of 15 U.S.C. 78o–7(q)).

[1158] *Id.*

[1159] 2,905,824 credit ratings × 3 seconds = 2,421.52 hours (rounded to 2,420 hours).

[1160] 2,905,824 credit ratings × 1.5 seconds = 1,210.76 hours (rounded to 1,210 hours).

[1161] *See, e.g., Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 18–19.

a Form NRSRO and Exhibits 1 through 9 would be "easily accessible" if they could be accessed through a clearly and prominently labeled hyperlink on the home page of the NRSRO's corporate Internet Web site. Consequently, NRSROs may need to make changes to their corporate Internet Web sites to disclose the information on an "easily accessible" portion of the Web site. The Commission preliminarily estimates re-configuring a corporate Internet Web site for this purpose would take an NRSRO an average of approximately 5 hours. For these reasons, the Commission preliminarily estimates that the proposed requirement would result in an average one-time hour burden of 5 hours per NRSRO, resulting in a one-time industry-wide hour burden of 50 hours.[1162]

Also as discussed in Section IV.D.1 with respect to the PRA, the Commission expects that the proposed requirement that an NRSRO provide a written copy of Exhibit 1 on request would result in a one-time hour burden for each NRSRO to establish procedures and protocols for receiving and processing these requests. The Commission preliminarily estimates that each NRSRO would spend an average of approximately 48 hours establishing such procedures and protocols, resulting in an industry-wide one-time hour burden of approximately 480 hours.[1163]

Also as discussed in Section IV.D.1 with respect to the PRA, the Commission preliminarily estimates that an NRSRO would receive an average of 200 requests per year to provide Exhibit 1 in writing and that it would take an average of 20 minutes to respond to each request. Therefore, the Commission preliminarily estimates that the average annual hour burden to each NRSRO would be approximately 67 hours, resulting in an annual industry-wide burden of approximately 670 hours. [1164]

In addition, the Commission preliminarily estimates that the incremental cost resulting from implementing the rulemaking mandated by Section 15E(q) of the Exchange Act in this manner would be minimal and, as noted above, the proposal would have substantial benefits. Consequently, the Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the benefits and costs associated with the proposals to amend the Instructions to Exhibit 1 of Form NRSRO and paragraph (i) of Rule 17g–1.

F. Proposed Enhancements to Rating Histories Disclosures

As discussed above, Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new subsection (q), which contains paragraphs (1) and (2).[1165] In addition to the proposed amendments to the Instructions for Exhibit 1 discussed in the preceding section, the Commission proposes to further implement the rulemaking mandated in Section 15E(q) of the Exchange Act, in part, by adding new paragraph (b) to Rule 17g–7.[1166] This proposed amendment would implement rulemaking mandated in Section 15E(q) of the Exchange Act by: (1) Re-codifying in paragraph (b) of Rule 17g–7 requirements currently contained in paragraph (d)(3) of Rule 17g–2; and (2) substantially enhancing those requirements.[1167] More specifically, paragraph (d)(3) of Rule 17g–2 requires an NRSRO to, among other things, make publicly available on its corporate Internet Web site in an XBRL format the information required to be documented pursuant to paragraph (a)(8) of the rule with respect to any credit rating initially determined by the NRSRO on or after June 26, 2007, the effective date of the Rating Agency Act of 2006.[1168]

These requirements would be enhanced in four ways. The first enhancement would make the disclosure easier for investors and other users of credit ratings to locate. Specifically, new proposed paragraph (b)(1) of Rule 17g–7 would require the NRSRO, among other things, to publicly disclose the ratings history information for free on an *easily accessible portion* of its corporate Internet Web site.[1169]

The second enhancement would broaden the scope of credit ratings subject to the disclosure requirements. Specifically, proposed new paragraph (b)(1)(i) of Rule 17g–7 would require an NRSRO to disclose each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the NRSRO is registered that was *outstanding* as of June 26, 2007 and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.[1170] With respect to credit ratings initially determined on or after June 26, 2007, the amendments would clarify that the disclosure of the rating history information would be triggered when an NRSRO publishes an initial credit rating, and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.[1171]

The third enhancement would increase the scope of information that must be disclosed about a rating action. Specifically, proposed paragraph (b)(2) of Rule 17g–7 would identify 7 categories of data that would need to be disclosed when a credit rating action is published pursuant to proposed new paragraph (b)(1) of Rule 17g–7.[1172] The fourth enhancement, contained in proposed new paragraph (b)(5) to Rule 17g–7, would be to require that a rating history not be removed from the disclosure until 20 years after the NRSRO withdraws the credit rating

[1162] 10 NRSROs × 5 hours = 50 hours.

[1163] 10 NRSROs × 48 hours = 480 hours.

[1164] 200 requests × ⅓ hours = 67 hours per NRSRO; 10 NRSROs × 67 hours = 670 hours.

[1165] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(q)(1) and (2). *See* Section

[1166] *See* proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[1167] *See* 15 U.S.C. 78o–7(q) and proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[1168] 17 CFR 240.17–2(d)(3)(i)(A). Paragraph (a)(8) of Rule 17g–2 requires an NRSRO to make and retain a record that, "for each outstanding credit rating, shows all rating actions and the date of such actions from the initial credit rating to the current credit rating identified by the name of the rated security or obligor and, if applicable, the CUSIP of the rated security or the Central Index Key ("CIK") number of the rated obligor." 17 CFR 240.17–2(a)(8).

[1169] *See* proposed new paragraph (b)(1) of Rule 17g–7.

[1170] *See* proposed new paragraph (b)(1)(i) of Rule 17g–7.

[1171] *See* proposed new paragraph (b)(1)(ii) of Rule 17g–7.

[1172] *See* proposed new paragraph (b)(2) of Rule 17g–7.

assigned to the obligor, security, or money market instrument.[1173]

1. Benefits

Section 15E(q)(1) of the Exchange Act provides that the Commission shall, by rule, require each NRSRO to publicly disclose information on the initial credit ratings determined by the NRSRO for each type of obligor, security, and money market instrument, and any subsequent changes to such credit ratings, for the purpose of allowing users of credit ratings to evaluate the accuracy of ratings and compare the performance of ratings by different NRSROs.[1174] The Commission is proposing to implement this rulemaking mandate, in part, through proposed new paragraph (b) of Rule 17g–7. The amendments would be designed to meet the goal in Section 15E(q)(1) that the information disclosed by NRSROs allows users of credit ratings to evaluate the accuracy of credit ratings and compare the performance of credit ratings by different NRSROs.

As the Commission stated when adopting the current ratings history disclosure requirement, the "intent of the rule is to facilitate comparisons of credit rating accuracy across all NRSROs—including direct comparisons of different NRSROs' treatment of the same obligor or instrument—in order to enhance NRSRO accountability, transparency, and competition."[1175] The proposals also are designed to provide persons with the "raw data" necessary to generate statistical information about the performance of each NRSRO's credit ratings.[1176] Finally, the proposals also are designed to implement provisions of Section 15E(q)(2) of the Exchange Act, which provides, among other things, that the Commission's rules shall require NRSROs to disclose information about the performance of credit ratings that is comparable among NRSROs, to allow users of credit ratings to compare the performance of credit ratings across NRSROs.[1177]

The Commission preliminarily believes that implementing the rulemaking mandated through Section 15E(q) of the Exchange Act through proposed new paragraph (b) of Rule 17g–7 would promote an efficient process for NRSROs. An NRSRO already should have in place information technology systems to meet the existing requirements of paragraph (d)(3) of Rule 17g–2, which it could adjust to comply with the proposed new disclosure requirements.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion in proposing new paragraph (b) of Rule 17g–7 would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from the proposed new paragraph would be attributable largely to the rulemaking mandated by Dodd-Frank Act[1178] and that the incremental costs would be minimal.

The Commission preliminarily believes that requiring an NRSRO to make ratings histories available on an "easily accessible" portion of its Web site would result in the same burden as re-configuring a corporate Internet Web site for the purpose of making Form NRSRO and Exhibits 1 through 9 "easily accessible." The Commission, therefore, preliminarily believes that the hour burden estimates discussed above in Section V.F.2 of this release with respect to the PRA would be appropriate for estimating the costs resulting from this requirement. Consequently, the Commission preliminarily estimates that requiring an NRSRO to make ratings histories available on an "easily accessible" portion of its corporate Internet Web site would take each NRSRO an average of approximately 5 hours, resulting in a one-time industry-wide hour burden of 50 hours.[1179]

Pursuant to paragraph (d)(3) of Rule 17g–2, NRSROs currently are required to provide ratings history information for each credit rating initially determined on or after June 26, 2007. Proposed new paragraph (b) of Rule 17g–7 would incorporate the requirements currently contained in paragraph (d)(3) of Rule 17g–2 with substantial enhancements that would require NRSROs to add more ratings histories to their disclosures and provide more information about each rating action in the ratings history for each given obligor, security, or money market instrument.[1180] The Commission preliminarily estimates that NRSROs would meet the requirements of new paragraph (b) of Rule 17g–7 by adapting the internal information technology systems and expertise and other resources they currently devote to complying with paragraph (d)(3) of Rule 17g–2, which would result in one-time costs to NRSROs. Consequently, the Commission preliminarily estimates that the proposed amendments would result in one-time costs to reprogram existing systems as well as to add the required information for all credit ratings outstanding as of (as opposed to initially determined on or after) June 26, 2007. As discussed in section IV.D.5 of this release with respect to the PRA, the Commission preliminarily estimates that the proposed enhancements to the current disclosure requirements would result in an average one-time hour burden to each NRSRO of approximately 135 hours, resulting in an industry-wide one-time hour burden of approximately 1,350 hours.[1181] The Commission preliminarily believes that NRSROs would implement the required changes internally.

In addition, as discussed in section IV.D.5 of this release with respect to the PRA, the Commission preliminarily estimates that the proposed enhanced disclosure requirements would result in an average annual hour burden per NRSRO of approximately 45 hours, resulting in an industry-wide annual hour burden of approximately 450 hours.[1182]

Finally, the Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on

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[1173] *See* proposed new paragraph (b)(5) of Rule 17g–7.

[1174] 15 U.S.C. 78o–7(q)(1).

[1175] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63838 (Dec. 4, 2009) ("Ratings history information for outstanding credit ratings is the most direct means of comparing the performance of two or more NRSROs. It allows an investor or other user of credit ratings to compare how all NRSROs that maintain a credit rating for a particular obligor or instrument initially rated that obligor or instrument and, thereafter, how and when they adjusted their credit rating over time."). The Commission notes that under the proposals the disclosures would not contain complete histories for many credit ratings because the NRSRO would not need to include information about rating actions taken before June 26, 2007. However, the Commission believes that the disclosures would still be used to compare how different NRSROs rated a particular obligor, security, or money market instrument beginning as of June 26, 2007 and from that date forward.

[1176] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63837–63838 (Dec. 4, 2009) ("The raw data to be provided by NRSROs pursuant to the new ratings history disclosure requirements * * * will enable market participants to develop performance measurement statistics that would supplement those required to be published by NRSROs themselves in Exhibit 1, tapping into the expertise of credit market observers and participants in order to create better and more useful means to compare the credit ratings performance of NRSROs.").

[1177] *See* 15 U.S.C. 78o–7(q)(2).

[1178] *Compare* 15 U.S.C. 78o–7(q) with proposed new paragraph (b) of Rule 17g–7; *see also* GAO Report 10–782, pp. 40–46 (indicating the current requirements of paragraph (d)(3) of Rule 17g–2 may not achieve the objectives of 15 U.S.C. 78o–7(q)).

[1179] 10 NRSROs × 5 hours = 50 hours.

[1180] *See* proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[1181] 10 NRSRO × 135 hours = 1,350 hours.

[1182] 10 NRSRO × 45 hours = 450 hours.

competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the benefits and costs associated with proposed new paragraph (b) of Rule 17g–7.

G. Credit Rating Methodologies

Section 932(a)(8) of the Dodd-Frank Act amends Section 15E of the Exchange Act to add new subsection (r).[1183] Section 15E(r) of the Exchange Act provides that the Commission shall prescribe rules, for the protection of investors and in the public interest, with respect to the procedures and methodologies, including qualitative and quantitative data and models, used by NRSROs that require each NRSRO to ensure a number of objectives.[1184] The Commission is proposing to implement Section 15E(r) of the Exchange Act through paragraph (a) of proposed new Rule 17g–8.[1185]

In particular, proposed paragraph (a)(1) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are approved by its board of directors or, if the NRSRO does not have a board of directors, another body performing a function similar to that of a board of directors.[1186] Proposed paragraph (a)(2) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that the procedures and methodologies, including qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the NRSRO.[1187] Proposed paragraph (a)(3)(i) would require an NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply.[1188] Proposed paragraph (a)(3)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings, to the extent that the changes are to surveillance or monitoring procedures and methodologies, are applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[1189] Proposed paragraph (a)(4)(i) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that the NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the NRSRO uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings.[1190] Proposed paragraph (a)(4)(ii) would require the NRSRO to have policies and procedures that are reasonably designed to ensure the NRSRO promptly publishes on its corporate Internet Web site significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the NRSRO uses to determine credit ratings that may result in a change in current credit ratings.[1191] Finally, proposed paragraph (a)(5) would require the NRSRO to have policies and procedures that are reasonably designed to ensure that it discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1192]

The Commission also is proposing that the policies and procedures required pursuant to proposed paragraph (a) of new Rule 17g–8 be subject to the record retention and production requirements of Rule 17g–2.[1193] Consequently, the Commission proposes adding new paragraph (b)(13) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (a) of new Rule 17g–8 as a record that must be retained.[1194]

1. Benefits

The Commission is proposing to implement Sections 15E(r) of the Exchange Act through paragraph (a) of proposed new Rule 17g–8. The Commission preliminarily believes that the proposals would provide several primary benefits for investors and other users of credit ratings. First, having the NRSRO's board of directors or a body performing a function similar to a board approve the NRSRO's procedures and methodologies for determining credit ratings could promote the quality and consistency of the procedures and methodologies.[1195] In addition, taking steps to ensure that such procedures and methodologies are developed and modified pursuant to the NRSRO's policies and procedures also could promote the quality and consistency of the procedures and methodologies.[1196]

Furthermore, taking steps to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are applied consistently to all credit ratings to which the changed procedures or methodologies apply could promote consistent and timely application of such changes, which could benefit investors and other users of credit ratings.[1197] Similarly, the consistent and timely application of changes to procedures and methodologies for determining credit ratings could be promoted by an NRSRO taking steps to ensure that material changes to the procedures and methodologies, including changes to qualitative and quantitative data and models, the NRSRO uses to determine credit ratings are, to the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time taking into consideration the number of ratings impacted, the

[1183] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(r).

[1184] *See* 15 U.S.C. 78o–7(r)(1)–(3).

[1185] *See* proposed paragraph (a) of new Rule 17g–8; *see also* Section II.F.1 of this release for a more detailed discussion of this proposal.

[1186] *See* proposed paragraph (a)(1) of new Rule 17g–8.

[1187] *See* proposed paragraph (a)(2) of new Rule 17g–8.

[1188] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8.

[1189] *See* proposed paragraph (a)(3)(ii) of new Rule 17g–8.

[1190] *See* proposed paragraph (a)(4)(i) of new Rule 17g–8.

[1191] *See* proposed paragraph (a)(4)(ii) of new Rule 17g–8.

[1192] *See* proposed paragraph (a)(5) of new Rule 17g–8.

[1193] 17 CFR 240.17g–2.

[1194] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section II.F.2 of this release for a more detailed discussion of this proposal.

[1195] *See* proposed paragraph (a)(1) of new Rule 17g–8.

[1196] *See* proposed paragraph (a)(2) of new Rule 17g–8.

[1197] *See* proposed paragraph (a)(3)(i) of new Rule 17g–8.

complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.[1198]

In addition, the Commission preliminarily believes the proposal would benefit investors and other users of credit ratings by improving the transparency of an NRSRO's procedures and methodologies for determining credit ratings. Specifically, investors and other users of credit ratings would benefit from the transparency arising from requiring that an NRSRO promptly publishes on an easily accessible portion of its corporate Internet Web site material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the reason for the changes, and the likelihood the changes will result in changes to any current ratings as well as significant errors identified in a procedure or methodology, including a qualitative or quantitative model.[1199] Finally, transparency also would be promoted by requiring that an NRSRO disclose the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.[1200]

The Commission preliminarily believes that an additional benefit of the proposal is that implementing Section 15E(r) of the Exchange Act by requiring the NRSRO to have policies and procedures designed to achieve the objectives set forth in that section would provide the NRSRO with flexibility to integrate the required policies and procedure with its procedures and methodologies for determining credit ratings. In other words, the proposal would rely on the NRSRO's policies and procedures for determining credit ratings and not require revisions that are contrary to those policies and procedures. The Commission preliminarily believes this approach appropriately avoids regulating the substance of credit ratings or the procedures and methodologies an NRSRO uses to determine credit ratings but, at the same time, requires an NRSRO to have procedures reasonably designed to achieve the objectives set forth in Section 15E(r) of the Exchange Act.

The Commission preliminarily believes this proposed implementation of Section 15E(r) of the Exchange Act would promote an efficient process for NRSROs to comply with the requirements. As noted above, the proposal would be designed to provide the NRSRO with flexibility to integrate the required policies and procedure with its procedures and methodologies for determining credit ratings.

The Commission proposes to further implement Section 15E(r) of the Exchange Act by adding new paragraph (b)(13) to Rule 17g–2 to apply the record retention and production requirements of Rule 17g–2 to the policies and policies and procedures required pursuant to paragraph (a) of proposed new Rule 17g–8.[1201] The record retention requirements would promote efficiency by facilitating Commission oversight of NRSROs. In this regard, recordkeeping rules such as Rule 17g–2 have proven integral to the Commission's investor protection function because the preserved records are the primary means of monitoring compliance with applicable securities laws.[1202] Rule 17g–2 is designed to ensure that an NRSRO makes and retains records that will assist the Commission in monitoring, through its examination authority, whether an NRSRO is complying with the provisions of Section 15E of the Exchange Act and the rules thereunder.[1203] The proposed amendment to Rule 17g–2 is designed to assist the Commission in monitoring an NRSRO's compliance with paragraph (a) of proposed new Rule 17g–8.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion in proposed paragraph (a) of new Rule 17g–8 would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from proposed paragraph (a) of new Rule 17g–8 would be attributable largely to the rulemaking mandated by Dodd-Frank Act[1204] and that the incremental costs would be minimal.

As discussed in Section IV.D.6 of this release with respect to the PRA, the Commission preliminarily estimates that an NRSRO would spend an average of approximately 200 hours establishing the policies and procedures that would be required under paragraph (a) of proposed new Rule 17g–8, resulting in an industry-wide one-time hour burden of approximately 2,000 hours.[1205] In addition, as discussed in Section IV.D.6 of this release with respect to the PRA, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours annually reviewing and updating the policies and procedures required under proposed paragraph (a) of Rule 17g–8, resulting in an annual industry-wide hour burden of approximately 500 hours.[1206]

As noted above, the Commission preliminarily estimates that the costs resulting from proposed new paragraph (b)(13) of new Rule 17g–2 largely would be attributable to the Commission's discretionary rulemaking. As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminary believes applying the recordkeeping requirements of Rule 17g–2 to five new types of records would result in one-time and annual hour burdens for NRSROs in connection with updating their record retention policies and procedures to account for and retain these new records. As discussed above in Section IV.D.3 of this release with respect to the PRA, based on staff experience, the Commission preliminarily estimates that the additional one-time hour burden for each NRSRO to update its record retention policies and procedures to account for the new records that would need to be retained under proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 would be 20 hours. Based on that estimate, the Commission preliminary believes that the average one-time hour burden resulting from proposed new paragraph (b)(13) to Rule 17g–2 would be approximately 4 hours per NRSRO, resulting an industry-wide one-time hour burden of approximately 40 hours.[1207] As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminarily estimates it would take an average of approximately one hour each year for an NRSRO to retain updated versions of the information required pursuant to paragraph (a) of new Rule 17g–8 resulting in an annual industry-wide burden of 10 hours.[1208]

For the foregoing reasons, Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on

[1198] *See* proposed paragraph (a)(3)(ii) of new Rule 17g–8.

[1199] *See* proposed paragraph (a)(4) of new Rule 17g–8.

[1200] *See* proposed paragraph (a)(5) of new Rule 17g–8.

[1201] *See* 17 CFR 240.17g–2(a), (c), (d), (e) and (f).

[1202] *See Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR at 33582 (June 18, 2007).

[1203] *Id.*

[1204] *Compare* 15 U.S.C. 78o–7(r)(1)–(3), *with* proposed paragraph (a) of new Rule 17g–8.

[1205] 10 NRSROs × 200 hours = 2,000 hours.

[1206] 10 NRSROs × 50 hours = 500 hours.

[1207] 20 hours/5 new required records = 4 hours; 10 NRSROs × 4 hours = 40 hours.

[1208] 10 NRSROs × 1 hour = 10 hours.

competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new paragraph (a)(8) of Rule 17g–8 and proposed new paragraph (b)(13) of Rule 17g–2.

H. Form and Certification to Accompany Credit Ratings

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new paragraph (s).[1209] Sections 15E(s)(1) through (4), among other things, set forth provisions specifying Commission rulemaking with respect to disclosures an NRSRO must make with the publication of a credit rating.[1210] The Commission proposes to implement these provisions by adding new paragraph (a) to Rule 17g–7.[1211] As discussed in detail below, the prefatory text of proposed new paragraph (a) would require an NRSRO to publish two items when taking a rating action: (1) A form containing information about the credit rating resulting from or subject to the rating action; [1212] and (2) any certification of a provider of third-party due diligence services received by the NRSRO that relates to the credit rating.[1213] Proposed paragraph (a)(1) of Rule 17g–7 would contain three primary components: Paragraph (a)(1)(i) prescribing the format of the form; [1214] paragraph (a)(1)(ii) prescribing the content of the form; [1215] and paragraph (a)(1)(iii) prescribing an attestation requirement for the form.[1216] Proposed paragraph (a)(2) of Rule 17g–7 would identify the certification from a provider of third-party due diligence services as an item to be published with the rating action.[1217]

1. Benefits

The Commission preliminarily believes that the proposed implementation of the rulemaking mandated by Sections 15E(s)(1), (2), (3), and (4)(D) through disclosure requirements in proposed new paragraph (a) of Rule 17g–7 could be used by investors and other users of credit ratings to better understand credit ratings in each class of credit rating issued by the NRSRO and to determine the adequacy and level of due diligence services provided by a third party with respect to an issuance of Exchange Act-ABS.[1218] As the Commission has noted previously, the NRSRO credit ratings of structured finance products such as Exchange Act-ABS played a role in the recent credit crisis.[1219] The proposed information to be disclosed in the form, including information about the limitations of credit ratings and information regarding the due diligence performed on Exchange Act-ABS, could promote more prudent use of credit ratings by investors and other users of credit ratings, and discourage undue reliance by investors and other users of credit ratings in making investment and other credit based decisions.

The Commission preliminarily believes that the proposed implementation of Section 15E(s) of the Exchange Act as mandated by the Dodd-Frank Act may promote efficiency. As noted above, the proposal would be designed to enable investors and other users of credit ratings to better understand the credit ratings and, thereby, promote more prudent use of credit ratings in terms of not unduly relying on credit ratings in making investment and other credit based decisions.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion in proposed new paragraph (a) of Rule 17g–7 would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from the proposed new paragraph (a) of Rule 17g–7 would be attributable largely to the rulemaking mandated by Dodd-Frank Act and that the incremental costs would be minimal.[1220]

The Commission preliminarily estimates that proposed new paragraph (a) to Rule 17g–7 would result in a one-time cost to develop the standardized disclosures and establish systems, protocols, and procedures for generating the new information as well as protocols, procedures, and systems designed to ensure that all the information required to be included in the form is input into a form prior to the publication of the credit rating, that any certifications received from a provider of third-party due diligence services are attached to the form, and that the form and certifications are published with the credit rating.

As discussed in above in Section IV.D.5 of this release with respect to the PRA, the Commission preliminarily estimates that the one-time hour burden to develop the required disclosures and establish systems, protocols, and procedures would be approximately 5,000 hours, resulting in a one-time industry-wide hour burden of approximately 50,000 hours.[1221] In addition, the Commission preliminarily allocates 75% of these burden hours (37,500 hours) to internal burden and the remaining 25% (12,500 hours) to external burden to hire outside professionals to assist in setting up the process to generate the forms and publish them with applicable credit ratings.[1222] The Commission

[1209] *See* 15 U.S.C. 78o–7(s).

[1210] *See* 15 U.S.C. 78o–7(s)(1)–(4).

[1211] *See* proposed new paragraph (a) of Rule 17g–7. *See also* Sections II.G.1 through G.5 of this release for a more detailed discussion of this proposal.

[1212] *See* proposed new paragraph (a)(1) of Rule 17g–7. This paragraph would implement, in large part, rulemaking specified in Sections 15E(s)(1), (2), and (3) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(1), (2), and (3).

[1213] *See* proposed new paragraph (a)(2) of Rule 17g–7. This paragraph would implement, in part, rulemaking specified in Section 15E(s)(4) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(4).

[1214] *See* proposed new paragraph (a)(1)(i) of Rule 17g–7. This paragraph would implement, in large part, rulemaking specified in Section 15E(s)(2) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(2).

[1215] *See* proposed new paragraph (a)(1)(ii) of Rule 17g–7. This paragraph would implement, in large part, rulemaking specified in Section 15E(s)(3) of the Exchange Act. *See* 15 U.S.C. 78o–7(s)(3). It would also incorporate the existing text of Rule 17g–7 as adopted by the Commission on January 20, 2011 to implement Section 943 of the Dodd-Frank Act. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Securities Act of 1933 ("Securities Act") Release No. 9175 (Jan. 20, 2011), 76 FR 4489 (Jan. 26, 2011) and 17 CFR 240.17g–7.

[1216] *See* proposed new paragraph (a)(1)(iii) of Rule 17g–7. This paragraph would implement, in large part, rulemaking specified in Section 15E(q)(2)(F) of the Exchange Act. *See* 15 U.S.C. 78o–7(q)(2)(F). Section 15E(q)(2)(F) of the Exchange Act requires that the Commission's rules require an NRSRO to include an attestation with any credit rating it issues affirming that no part of the rating was influenced by any other business activities, that the rating was based solely on the merits of the instruments being rated, and that such rating was an independent evaluation of the risks and merits of the instrument. *See* 15 U.S.C. 78o–7(q)(2)(F). Proposed paragraph (a)(1)(iii) of Rule 17g–7 would require the NRSRO to attach to the form a signed statement by a person within the NRSRO who has responsibility for the credit rating affirming that: (1) No part of the credit rating was influenced by any other business activities; (2) the credit rating was based solely upon the merits of the instruments being rated; and (3) the credit rating was an independent evaluation of the risks and merits of the instrument. Thus, the proposed requirement would mirror the statutory text in terms of the representations that would need to be made in the attestation. *Compare* proposed new paragraphs (a)(1)(iii)(A) through (C) of Rule 17g–7, *with* 15 U.S.C. 78o–7(q)(2)(F).

[1217] *See* proposed paragraph (a)(2) of Rule 17g–7.

[1218] *See* 15 U.S.C. 78o–7(s)(1)(B).

[1219] *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 73 FR 36212 (June 25, 2008).

[1220] *Compare* 15 U.S.C. 78o–7(s)(1), (2), (3) and (4)(D) with proposed new paragraph (a) of Rule 17g–7.

[1221] 10 NRSROs × 5,000 hours = 50,000 hours.

[1222] 50,000 hours × 0.75 = 37,500 hours; 50,000 hours × 0.25 = 12,500 hours. This allocation is

Continued

preliminarily estimates $273 per hour for internal costs [1223] and $400 per hour for external costs for retaining outside professionals such as attorneys and information technology consultants,[1224] resulting in an industry-wide one-time cost of approximately $15,237,500.[1225]

With respect to the annual costs, the Commission preliminarily believes that the estimate should be broken into two components. The first component would constitute the cost to an NRSRO to update its standardized disclosures. As discussed in above in Section IV.D.5 of this release with respect to the PRA, the Commission preliminarily believes an NRSRO would spend substantially less time updating the disclosures than the one-time estimate of approximately 5,000 hours per NRSRO to initially develop the standardized disclosures and establish the systems, protocols, and procedures to generate the forms. Consequently, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 500 hours per year updating the standardized disclosures, resulting in an annual industry-wide burden of approximately 5,000 hours. The Commission preliminarily believes that the update process would be handled by the NRSROs internally.

The second component would constitute the amount of time an NRSRO would spend generating and publishing each form and attaching to the form applicable certifications. The Commission preliminarily believes this estimate should be based on the number of rating actions taken per year by the NRSROs because the requirement to generate and publish the form and attach the certifications would be triggered upon the taking of a rating action. As discussed above in Section IV.D.5 of this release with respect to the PRA, the Commission preliminarily estimates that the 10 NRSROs take approximately 2,909,958 credit rating actions per year.[1226] The Commission preliminarily estimates that the time it would take to generate a form by populating it with the required disclosures (most of which would have been pre-established) and to publish the form and any applicable certifications with the credit rating would be 15 minutes, resulting in an industry-wide annual hour burden of approximately 727,490.[1227] Moreover, although larger NRSROs may realize economies of scale, the Commission preliminarily believes that the annual hour burden would be allocated to the 10 NRSROs based on the number of credit ratings they have outstanding.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new paragraph (a) of Rule 17g–7.

I. Rule 15GA–2 and Form ABS–15G

The Commission is proposing new Rule 15Ga–2 and amendments to Form ABS–15G.[1228] The new rule and amended form would implement Section 15E(s)(4)(A) of the Exchange Act.[1229] Proposed new Rule 15Ga–2 would require an issuer or underwriter of any Exchange Act-ABS that is to be rated by an NRSRO to furnish a Form ABS–15G on the EDGAR system containing the findings and conclusions of any third-party "due diligence report" obtained by the issuer or underwriter. Under the proposal, the disclosure would be furnished using Form ABS–15G for both registered and unregistered offerings of Exchange Act-ABS. In addition, under the Commission's proposal, an issuer or underwriter would not need to furnish Form ABS–15G if the issuer or underwriter obtains a representation from each NRSRO engaged to produce a credit rating for the Exchange Act-ABS that can be reasonably relied on that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7.

1. Benefits

The proposed rulemaking would provide a standardized format for an issuer or underwriter to make the disclosures required by Section 15E(s)(4)(A). In addition, the Commission proposes to permit an issuer or underwriter to rely on an NRSRO to make the required disclosure. This would avoid duplicate disclosures. The Commission preliminarily believes these proposals would give effect to the objective in Section 15E(s)(4)(A) of the Exchange Act that there be public disclosure of the findings and conclusions of a provider of third-party due diligence services. In addition to directly using the summaries of due diligence findings contained in the disclosure to evaluate the Exchange Act-ABS, investors and other users of credit ratings could benefit by being able to review that disclosure to determine the adequacy and the level of due diligence services provided by a third party. The required increased transparency regarding the due diligence process could promote greater rigor and discipline in that process, to the benefit of investors. In addition, if no disclosure is made, investors and other users of credit ratings would be put on notice that the issuer or underwriter did not employ a provider of third-party due diligence services in connection with the offering of an Exchange Act-ABS.

The Commission also is proposing amendments to Rule 314 of Regulation S–T that would permit municipal securitizers of Exchange Act-ABS, or underwriters in the offering of municipal Exchange Act-ABS, to provide the information required by Form ABS–15G on EMMA, the Municipal Securities Rulemaking Board's centralized public database.[1230] The Commission preliminarily believes that the use of this pre-existing database would promote an efficient process for municipal securitizers of Exchange Act-ABS or underwriters in the offering of municipal Exchange Act-ABS, who would use it to file the required information, as well as for investors and other market participants, who would

based on the Commission's allocation of the industry-wide hour burden for the amount of time it would take a securitizer to set-up a system to make the disclosures required by Form ABS–15G. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011).

[1223] The $273 per hour figure is based on the salary for compliance managers from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1224] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1225] 37,500 hours × $273 = $10,237,500; 12,500 hours × $400 = $5,000,000; $10,237,500 + $5,000,000 = $15,237,500.

[1226] [2,000,000 credit rating actions constituting upgrades, downgrades, placements on credit watch, and withdrawals] + [4,134 preliminary or expected credit ratings] + [415,117 initial credit ratings] + [490,707 affirmations of existing credit ratings] = 2,909,958 rating actions per year. *See* Section IV.D.5 of this release for an extensive discussion and explanation of these numbers.

[1227] 2,909,958 rating actions × .25 hours = 727,489.5 hours (rounded to 727,490 hours).

[1228] *See* proposed new Rule 15Ga–2 and proposed amendments to Form ABS–15G.

[1229] *See* 15 U.S.C. 78o–7(s)(4)(A); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

[1230] *See* proposed amendments to Rule 314 of Regulation S–T (17 CFR 231.314); *see also* Section II.H.1 of this release for a more detailed discussion of this proposal.

use it to access that information. The Commission preliminarily believes that the proposed implementation of Section 15E(s)(4)(A) of the Exchange Act would promote an efficient process for issuers and underwriters by requiring an issuer or underwriter to use a standardized form to make the disclosure. It also would permit an issuer or underwriter to rely on an NRSRO to make the disclosures, thereby eliminating duplicate disclosure requirements.

2. Costs

The Commission preliminarily estimates that the costs arising from proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G would be attributable largely to the requirements set forth in Section 15E(s)(4)(A) of the Exchange Act.[1231] Specifically, the Commission believes that the costs to issuers and underwriters arising from preparing a summary of the findings and conclusions of any third-party due diligence report they obtained would be directly attributable to the Dodd-Frank Act, while the incremental costs associated with placing such summaries into Form ABS–15G and furnishing the form on EDGAR (or EMMA, as appropriate) would be attributable to the Commission's rulemaking. As noted above, however, the Commission's rulemaking would provide issuers and underwriters with guidelines as to how they can meet the requirements of Section 15E(s)(4)(A) of the Exchange Act, which the Commission believes would eliminate costs that could potentially arise from uncertainty as to how those requirements could be fulfilled.

As discussed above in Section IV.D.9 of this release with respect to the PRA, the Commission preliminarily estimates that proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G would result in one-time and annual costs for issuers and underwriters in offerings of registered and unregistered Exchange Act-ABS.[1232] The Commission preliminarily estimates that issuers and underwriters would incur a one-time cost in connection with developing processes and protocols to provide the required information to comply with new Rule 15Ga–2, including modifying their existing Form ABS–15G processes and protocols to accommodate the requirements of Rule 15Ga–2. In the adopting release for Form ABS–15G, the Commission estimated that 270 unique securitizers would be required to file the form.[1233] The Commission preliminarily estimates that each securitizer would spend an average of approximately 100 hours to develop processes and protocols to comply with new Rule 15Ga–2 and to modify their existing Form ABS–15G processes and protocols to provide for the disclosure of the information required pursuant to Rule 15Ga–2, resulting in an industry-wide one-time hour burden of approximately 27,000 hours.[1234] The Commission further believes that this work would be done internally.

As discussed above in Section IV.D.9 of this release with respect to the PRA, the Commission has preliminarily based its estimate of the annual hour burden for preparing and furnishing Form ABS–15G on an estimate of the total number of Exchange Act-ABS offerings per year. In the adopting release for Rule 17g–7, the Commission estimated that there would be an average of approximately 2,067 Exchange Act-ABS offerings per year.[1235] The Commission preliminarily estimates that an issuer or underwriter would spend an average of approximately one hour completing and submitting each Form ABS–15G for purpose of meeting the requirement in Rule 15Ga–2. The Commission bases this preliminary estimate on the fact that the information that would be required to be included in Form ABS–15G pursuant to proposed new Rule 15Ga–2 could be drawn directly from the due diligence reports the Commission expects providers of third-party due diligence services to generate with respect to their performance of due diligence services. Therefore, the Commission preliminarily estimates that the industry-wide annual hour burden resulting from proposed new Rule 15Ga–2 and the amendments to Form ABS–15G would be approximately 2,067 hours.[1236] The Commission believes that this work would be done internally.

The Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G.

J. Third-Party Due Diligence for Asset-Backed Securities

Section 932(a)(8) of the Dodd-Frank Act amended Section 15E of the Exchange Act to add new paragraph (s)(4).[1237] The Commission is proposing new Rule 17g–10 and new Form ABS Due Diligence-15E to implement rulemaking mandated in Sections 15E(s)(4)(B) and (C) of the Exchange Act.[1238] Proposed new Rule 17g–10 would contain three paragraphs: (a), (b)

[1231] *Compare* 15 U.S.C. 78o–7(s)(4)(A), *with* proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G.

[1232] As discussed above in Section IV.D.9, although issuers and underwriters likely will seek to obtain representations from NRSROs engaged to produce a credit rating for Exchange Act-ABS that the NRSRO will publicly disclose the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter with the publication of the credit rating five business days prior to the first sale in the offering in an information disclosure form generated pursuant to proposed new paragraph (a)(1) of Rule 17g–7, thus removing the need for the issuer or underwriter to do so. Consequently, the PRA burden for issuers and underwriters may be reduced substantially. However, to be conservative, the Commission preliminarily allocates the PRA burden for complying with proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G to the issuers and underwriters. The Commission also is proposing to permit issuers of municipal Exchange Act-ABS, or underwriters in such offerings, to provide the information required by Form ABS–15G on EMMA, which would also limit the PRA burden on issuers and underwriters of municipal Exchange Act-ABS subject to the proposed rule.

[1233] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4506 (Jan. 26, 2011).

[1234] 270 unique securitizers × 100 hours = 27,000 hours. This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set up a system to make the disclosures required by Form ABS–15G as originally adopted by the Commission. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011). The Commission, however, believes that the hour burden for amending existing Form ABS–15G processes and protocols will be significantly lower than the estimate of 850 hours used to initially develop those processes and protocols.

[1235] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011). As noted above, issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, as discussed in Section II.H of this release, the Commission preliminarily believes that providers of third-party due diligence services are used primarily for RMBS transactions. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS. This also makes the Commission's estimates more conservative.

[1236] 2,067 Exchange Act-ABS transactions × 1 hour = 2,067 hours.

[1237] *See* Public Law 111–203 § 932(a)(8) and 15 U.S.C. 78o–7(s)(4).

[1238] *See* proposed new Rule 17g–10, and proposed new Form ABS Due Diligence-15E; *see also* Sections II.H.2 and II.H.3 of this release for a more detailed discussion of this proposal.

and (c).[1239] Proposed paragraph (a) would provide that the written certification of a provider of third-party due diligence services required pursuant to Section 15E(s)(4)(B) of the Exchange Act must be made on Form ABS Due Diligence-15E.[1240] Proposed paragraph (b) of new Rule 17g–10 would provide that the written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.[1241] Proposed paragraph (c) of new Rule 17g–10 would contain four definitions to be used for the purposes of Section 15E(s)(4)(B) and Rule 17g–10; namely, a definition of "due diligence services,"[1242] "issuer,"[1243] "originator,"[1244] and "securitizer."[1245]

Proposed Form ABS Due Diligence-15E would contain five line items identifying information the provider of third-party due diligence services would need to provide in the form.[1246] It also would contain a signature line with a corresponding representation.[1247] Item 1 would elicit the identity and address of the provider of third-party due diligence services.[1248] Item 2 would elicit the identity and address of the issuer, underwriter, or NRSRO that employed the provider of third-party due diligence services.[1249] Item 3 would instruct the provider of third-party due diligence services to identify each NRSRO whose published criteria for performing due diligence the provider of third-party due diligence services satisfied in performing the due diligence review.[1250] Item 4 would require the provider of third-party due diligence services to describe the scope and manner of the due diligence performed.[1251] Item 5 would require the provider of third-party due diligence services to describe the findings and conclusions resulting from the review.[1252]

1. Benefits

The proposed rulemaking would be designed to promote a thorough review by the provider of third-party due diligence services of data, documentation, and other relevant information necessary for an NRSRO to provide an accurate credit rating.[1253] The Commission also preliminarily believes that, in combination with the proposed requirement in proposed new paragraph (a)(2) of Rule 17g–7 that the NRSRO disclose the certifications, the proposed rulemaking would allow the public to determine the adequacy and level of due diligence services provided by a third party.

The Commission preliminarily believes that the proposed implementation of Section 15E(s)(4)(C) of the Exchange Act as mandated by the Dodd-Frank Act would promote an efficient process for NRSROs by establishing a standardized format for the certification and providing clarity through the definition of "due diligence services" as to when the requirement was triggered.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to proposed new Rule 17g–10 and new Form ABS Due Diligence-15E would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from proposed new Rule 17g–10 and new Form ABS Due Diligence-15E would be attributable largely to the rulemaking mandated by Dodd-Frank Act[1254] and that the incremental costs would be minimal.

As discussed above in Section IV.D.8 of this release with respect to the PRA, the Commission preliminarily estimates that the proposed new rule and form would result in one-time hour burdens for providers of third-party due diligence services to develop processes and protocols to provide the required information in new Form ABS Due Diligence-15E and submit the certifications to NRSROs. The Commission preliminarily estimates that there are approximately 10 firms that provide, or would begin providing, third-party "due diligence services" to issuers and underwriters of Exchange Act-ABS as the term "due diligence services" would be defined in paragraph (a) of proposed new Rule 17g–10. The Commission preliminarily estimates that each of these providers of third-party due diligence services would spend approximately 300 hours to develop these processes and protocols, resulting in a one-time industry-wide burden of 3,000 hours.[1255] In addition, the Commission preliminarily allocates 75% of these burden hours (2,250 hours) to internal burden and the remaining 25% (750 hours) to external burden to hire outside attorneys to provide legal advice on the requirements of new Rule 17g–10 and Form ABS Due Diligence-15E.[1256] The Commission, therefore, preliminarily estimates that the average one-time cost to each provider third-party due diligence services would be $91,425, resulting in an industry-wide one-time cost of $914,250.[1257]

With respect to the annual cost, the Commission preliminarily believes that the estimate should be based on the number of issuances per year of Exchange Act-ABS, since the requirement to produce the certification and provide it to NRSROs would be triggered when an issuer, underwriter, or NRSRO hires a provider of third-party due diligence services with respect to such transactions.[1258] In the adopting release for Rule 17g–7, the

[1239] *See* proposed paragraphs (a), (b) and (c) of Rule 17g–10 *see also* Sections II.H.2 of this release for a more detailed discussion of this proposal.

[1240] *See* proposed paragraph (a) of new Rule 17g–10.

[1241] *See* proposed paragraph (b) of Rule 17g–10.

[1242] *See* proposed paragraph (c)(1) of new Rule 17g–10.

[1243] *See* proposed paragraph (c)(2) of new Rule 17g–10.

[1244] *See* proposed paragraph (c)(3) of new Rule 17g–10.

[1245] *See* proposed paragraph (c)(4) of new Rule 17g–10.

[1246] *See* proposed new Form ABS Due Diligence-15E; *see also* Section II.H.3 of this release for a more detailed discussion of this proposal.

[1247] *See* proposed new Form ABS Due Diligence-15E.

[1248] *See* Item 1 to proposed Form ABS Due Diligence-15E.

[1249] *See* Item 2 to proposed Form ABS Due Diligence-15E.

[1250] *See* Item 3 to proposed Form ABS Due Diligence 15E.

[1251] *See* Item 4 to proposed Form ABS Due Diligence 15E.

[1252] *See* Item 5 to proposed Form ABS Due Diligence 15E.

[1253] *See* 15 U.S.C. 78o–7(s)(4)(B).

[1254] *Compare* 15 U.S.C. 78o–7(s)(4)(B) and (C), *with* proposed new Rule 17g–10 and proposed new Form ABS Due Diligence-15E.

[1255] 10 Providers of third-party due diligence services × 300 hours = 3,000 hours. This estimate is based on the Commission's estimate for the amount of time it would take a securitizer to set up a system to make the disclosures required by Form ABS–15G as originally adopted by the Commission. *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011). The Commission, however, reduces the hour estimate of 850 hours originally used for Form ABS–15G by approximately two-thirds because information required to provided in proposed new Form ABS Due Diligence-15E is substantially less detailed and complex than the information required in Form ABS–15G as initially adopted by the Commission.

[1256] 3,000 hours × 0.75 = 2,250 hours; 3,000 hours × 0.25 = 750 hours.

[1257] 2,250 hours × $273 = $614,250; 750 hours × $400 = $300,000; $614,250 + $300,000 = $914,250; $914,250/10 providers of third-party due diligence services = $91,250. The $273 per hour figure is based on the rate for compliance managers from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The $400 figure is based on the Commission's estimate of $400 per hour to engage an outside attorney. *See Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009).

[1258] *See* 15 U.S.C. 78o–7(s)(4)(B) and (C), and proposed new Rule 17g–10.

Commission estimated there would be an average of approximately 2,067 Exchange Act-ABS offerings per year.[1259] In addition, the Commission preliminarily estimates that a provider of third-party due diligence services would spend approximately 30 minutes completing and submitting Form ABS Due Diligence-15E. The Commission bases this preliminary estimate on the fact that first three Items in the form require basic information and the fourth Item (the due diligence performed) and the fifth Item (the findings and conclusions of the review) could be drawn directly from the due diligence reports the Commission expects providers of third-party due diligence services generate with respect to their performance of due diligence services. Therefore, the Commission preliminarily estimates that the industry-wide annual hour burden resulting from proposed new Rule 17g–10 and Form ABS Due Diligence-15E would be approximately 1,034 hours.[1260] The Commission believes that completing and submitting Form ABS Due Diligence-15E would be done internally.

The Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new Rule 17g–10 and new Form ABS Due Diligence-15E.

K. Standards of Training, Experience, and Competence

Section 936 of the Dodd-Frank Act provides that the Commission shall issue rules that are reasonably designed to ensure that any person employed by an NRSRO to perform credit ratings: (1) Meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; [1261] and (2) is tested for knowledge of the credit rating process.[1262] The Commission proposes to implement Section 936 by proposing new Rule 17g–9 and amending Rule 17g–2.[1263]

Proposed paragraph (a) of new Rule 17g–9 would require an NRSRO to establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the NRSRO is registered.[1264]

Proposed paragraph (b) would identify factors the NRSRO must consider when designing the standards.[1265] Specifically, the NRSRO would need to consider:

- If the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated;
- If the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies;
- The classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses; and
- The complexity of the obligors, securities, or money market instruments being rated by the individuals.

Proposed paragraph (c) of new Rule 17g–9 would prescribe two requirements that an NRSRO must incorporate into its standards of training, experience, and competence.[1266] Proposed paragraph (c)(1) of new Rule 17g–9 would provide that the standards of training, experience, and competence must include a requirement for periodic testing of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes or subclasses of credit ratings for which the individual is responsible for determining credit ratings.[1267] Proposed paragraph (c)(2) of new Rule 17g–9 would provide that the standards of training, experience, and competence must include a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.[1268]

In addition, the Commission proposes adding new paragraph (b)(15) to Rule 17g–2 to identify the standards of training, experience, and competence the NRSRO must establish, maintain, enforce, and document pursuant to proposed new Rule 17g–9 as a record that must be retained.[1269] As a result, the procedures would be subject to the record retention and production requirements in paragraphs (c) through (f) of Rule 17g–2.[1270]

1. Benefits

The Commission is proposing to implement rulemaking mandated by Section 936 of the Dodd-Frank Act through proposed new Rule 17g–9. The proposed rule would be designed to achieve the objectives in Section 936 that any person employed by an NRSRO to perform credit ratings: (1) Meets standards of training, experience, and competence necessary to produce accurate ratings for the categories of issuers whose securities the person rates; [1271] and (2) is tested for knowledge of the credit rating process.[1272] The Commission preliminarily believes that the proposed new rule could promote the integrity of the ratings process to the benefit of

[1259] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4508 (Jan. 26, 2011). The Commission notes that issuers, underwriters, and NRSROs may not use providers of third-party due diligence services with respect to every issuance of Exchange Act-ABS. For example, as discussed in Section II.H of this release, the Commission preliminarily believes that providers of third-party due diligence services are used primarily for RMBS transactions. However, the Commission's estimate uses the total number of estimated Exchange Act-ABS offerings (as opposed to a lesser amount based on an estimate of RMBS offerings) because the use of providers of third-party due diligence services may migrate to other types of Exchange Act-ABS. This also makes the Commission's estimates more conservative.

[1260] 2,067 Exchange Act-ABS offerings × 30 minutes = 1,034 hours.

[1261] *See* Public Law 111–203 § 936(1).

[1262] *See* Public Law 111–203 § 936(2).

[1263] *See* proposed new Rule 17g–9 and proposed new paragraph (b)(15) of Rule 17g–2.

[1264] *See* proposed paragraph (a) of new Rule 17g–9; *see also* Section II.I.1.a of this release for a more detailed discussion of this proposal.

[1265] *See* proposed paragraph (b) of new Rule 17g–9; *see also* Section II.I.1.b of this release for a more detailed discussion of this proposal.

[1266] *See* proposed paragraphs (c)(1) and (2) of new Rule 17g–9; *see also* Section II.I.1.c of this release for a more detailed discussion of this proposal.

[1267] *See* proposed paragraph (c)(1) of new Rule 17g–9.

[1268] *See* proposed paragraph (c)(2) of new Rule 17g–9.

[1269] *See* proposed new paragraph (b)(15) to Rule 17g–2.

[1270] *See* 17 CFR 240.17g–2; *see also* Section II.I.2 of this release for a more detailed discussion of this proposal.

[1271] *See* Public Law 111–203 § 936(1).

[1272] *See* Public Law 111–203 § 936(2).

investors and other users of credit ratings.

Paragraph (a) of proposed new Rule 17g–9 would require the NRSRO to design its own standards but provide that they must be reasonably designed to achieve the common objective that individuals employed by the NRSRO to determine credit ratings produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered. This could benefit NRSROs by providing flexibility to allow each NRSRO to customize the standards according to its unique procedures and methodologies for determining credit ratings and its size.

Paragraph (b) of proposed new Rule 17g–9 would identify factors the NRSRO must consider when designing the standards.[1273] This would provide guidance to NRSROs about the Commission's expectations for the design of the standards of training, experience, and competence. It also could serve an investor protection function by providing benchmarks that Commission examiners could use to evaluate whether a given NRSRO's standards are reasonably designed to meet the objective that individuals employed by the NRSRO to determine credit ratings produce accurate credit ratings in the classes of credit ratings for which the NRSRO is registered.

Paragraph (c)(1) of proposed new Rule 17g–9 would provide that the standards of training, experience, and competence must include a requirement for periodic testing of the individuals employed by the NRSRO to determine credit ratings on their knowledge of the procedures and methodologies used by the NRSRO to determine credit ratings in the classes or subclasses of credit ratings for which the individual participates in determining credit ratings.[1274] The rule could benefit NRSROs by allowing each NRSRO to establish the frequency and manner of testing its analysts. These considerations may depend on the number of analysts the NRSRO employs, the complexity of the products that are being rated, and the varying levels of experience of the analysts.

Paragraph (c)(2) of proposed new Rule 17g–9 would provide that the standards of training, experience, and competence must include a requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.[1275] This would establish a minimum requirement that someone with experience performing credit analysis is involved in determining the credit rating.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to proposed new Rule 17g–9 would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from proposed new Rule 17g–9 would be attributable largely to the rulemaking mandated by Dodd-Frank Act and that the incremental costs would be minimal.[1276]

As discussed above in Section IV.D.7 of this release with respect to the PRA, the Commission preliminary estimates that an NRSRO would incur one-time and annual hour burdens as a result of proposed new Rule 17g–9. Also, the Commission preliminarily estimates that the degree of the one-time and annual hour burdens resulting from proposed Rule 17g–9 would depend on the number of credit analysts an NRSRO employs as well as the range and complexity of the obligors, securities, and money market instruments it rates. Thus, hour burdens in the PRA and the costs estimated below are based on the number of credit rating analysts employed by the NRSROs.

As discussed above in Section IV.D.7 of this release with respect to the PRA, the Commission preliminarily estimates that the one-time hour burden to establish the standards that would be required under proposed new Rule 17g–9 would be approximately 5 hours per credit analyst. Based on the 2009 annual certifications, the Commission estimates that the NRSROs currently employ approximately 3,520 credit analysts,[1277] resulting in an industry-wide one-time hour burden of 17,600 hours.[1278] In addition, the Commission estimates that 75% of the burden hours (13,200 hours) would be internal and the remaining 25% (4,400 hours) would be external to hire outside professionals to assist in setting up training programs.[1279] Consequently, the Commission preliminarily estimates that the industry-wide one-time internal cost would be approximately $3,603,000.[1280] With respect to the external costs associated with the proposal, the Commission preliminarily estimates that outside professionals would charge approximately $400 per hour.[1281] Consequently, the Commission preliminarily estimates that the industry-wide external cost would be approximately $1,760,000.[1282] The Commission, therefore, preliminarily estimates that the total industry-wide one-time cost of proposed Rule 17g–9 would be approximately $5,363,000.[1283] The Commission preliminarily estimates that this cost would be allocated to the 10 NRSROs based on the number of credit analysts each employs.

As discussed above in Section IV.D.7 of this release with respect to the PRA, the Commission believes that the annual cost to comply with proposed new Rule 17g–9 would be less than the one-time cost since NRSROs already would have established the standards of training, experience, and competence for the individuals they employ to determine credit ratings and, therefore, only would need to update them. The Commission preliminarily estimates that reviewing and updating the standards as appropriate would take approximately 1 hour per credit analyst, resulting in an annual industry-wide hour burden of approximately 3,520 hours.[1284] The Commission estimates that approximately 75% of these burden hours (2,640 hours) would be internal and the remaining 25% (880 hours) would be external to hire outside professionals to assist in updating the training programs. Consequently, the Commission preliminarily estimates that the industry-wide annual internal costs would be approximately $720,720.[1285] With respect to the external costs, the Commission preliminarily estimates that outside

[1273] *See* proposed paragraph (b) of new Rule 17g–9.

[1274] *Id.*

[1275] *Id.*

[1276] *Compare* Public Law 111–203 § 936 with proposed new Rule 17g–9.

[1277] *See* Figure 3.

[1278] 3,520 credit analysts × 5 hours = 17,600 hours.

[1279] 17,600 hours × 0.75 = 13,200 hours; 17,600 hours × 0.25 = 4,400 hours.

[1280] 13,200 hours × $273 = $3,603,600. The $273 per hour figure is based on the rate for compliance managers from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1281] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1282] 4,400 hours × $400 = $1,760,000.

[1283] $1,760,000 + $3,603,000 = $5,363,000.

[1284] 3,520 credit analysts × 1 hour = 3,520 hours.

[1285] 2,640 hours × $273 = $720,720. The $273 per hour figure is based on the rate for compliance managers from SIFMA's Management & Professional Earnings in the Securities Industry 2010, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

professionals would charge approximately $400 per hour.[1286] Consequently, the Commission preliminarily estimates that the annual industry-wide external costs would be approximately $352,000.[1287] The Commission, therefore, preliminarily estimates that the total industry-wide annual cost would be approximately $1,072,720.[1288] The Commission preliminarily estimates that this cost would be allocated to the 10 NRSROs based on the number of credit analysts each employs.

The Commission acknowledges that the three-year analyst experience requirement proposed in paragraph (c)(2) of proposed new Rule 17g–9 could impose a barrier to entry to becoming an NRSRO. It is possible that this requirement, as well as the increased training standards in general, could increase labor costs for NRSROs by increasing the competition for credit analysts with the requisite amount of experience. The Commission further understands that the effects could likely be more pronounced with existing smaller NRSROs, as well as with new NRSRO entrants, as these smaller firms would presumably be less able to bear the costs. This could, in turn, decrease competition amongst NRSROs. The Commission requests comment on this potential effect of the proposed rulemaking.

The Commission preliminarily estimates that, although the costs resulting from proposed new paragraph (b)(15) of new Rule 17g–2 would be attributable to the Commission's discretionary rulemaking, those incremental costs would be minimal. As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminary believes that applying the recordkeeping requirements of Rule 17g–2 to five new types of records would result in one-time and annual hour burdens for NRSROs in connection with updating their record retention policies and procedures to retain these new records. As discussed above in Section IV.D.3 of this release with respect to the PRA, based on staff experience, the Commission preliminarily estimates that the additional one-time hour burden for each NRSRO to update its record retention policies and procedures for the new records that would need to be retained under proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 would be 20 hours. Based on that estimate, the Commission preliminary believes that the average one-time hour burden attributable to proposed new paragraph (b)(15) of Rule 17g–2 would be approximately 4 hours per NRSRO, resulting in an industry-wide hour burden of approximately 40 hours.[1289] As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminarily estimates it would take an average of approximately one hour each year for an NRSRO to retain updated versions of the information required pursuant to proposed new paragraph (b)(15) of Rule 17g–2, resulting in an industry-wide hour burden of 10 hours.[1290]

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new Rule 17g–9 and new paragraph (b)(15) of Rule 17g–2.

L. Universal Rating Symbols

Section 938(a) of the Dodd-Frank Act provides that the Commission shall require, by rule, each NRSRO to establish, maintain, and enforce written policies and procedures that: (1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument; [1291] (2) clearly define and disclose the meaning of any symbol used by the NRSRO to denote a credit rating; [1292] and (3) apply any symbol described in item (2) in a manner that is consistent for all types of securities and money market instruments for which the symbol is used.[1293]

The Commission proposes to implement this rulemaking mandate through paragraph (b) of proposed new Rule 17g–8. In particular, paragraph (b)(1) of proposed new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.[1294] Paragraph (b)(2) of proposed new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to clearly define the meaning of each symbol, number, or score in the rating scale used by the NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the NRSRO is registered and to include such definitions in Exhibit 1 to Form NRSRO.[1295] Paragraph (b)(3) of proposed new Rule 17g–8 would require the NRSRO to have policies and procedures reasonably designed to apply any symbol, number, or score defined pursuant to paragraph (b)(2) of new Rule 17g–8 in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.[1296]

The Commission also is proposing that the policies and procedures required pursuant to proposed paragraph (b) of new Rule 17g–8 be subject to the record retention and production requirements of Rule 17g–2.[1297] Consequently, the Commission proposes adding new paragraph (b)(14) to Rule 17g–2 to identify the policies and procedures an NRSRO is required to establish, maintain, enforce, and document pursuant to proposed paragraph (b) of new Rule 17g–8 as a record that must be retained.[1298]

1. Benefits

The proposal could facilitate investor understanding of credit ratings by promoting a consistent application of rating methodologies to particular credit ratings, at least within a class of credit ratings. In addition, the proposed requirement for NRSROs to disclose the meaning of credit rating symbols, numbers, and scores could benefit investors and other users of credit ratings by promoting a better understanding of credit rating terminology and allowing them to better compare the various ratings issued by a single NRSRO.

[1286] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* 76 FR at 4507–4506 (Jan. 26, 2011) (providing an estimate of $400 an hour engage outside professionals) and *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR 63889 (Dec. 4, 2009) (providing an estimate of $400 per hour to engage an outside attorney).

[1287] 880 hours × $400 = $352,000.

[1288] $720,720 + $352,000 = $1,072,072.

[1289] 20 hours/5 new required records = 4 hours; 10 NRSROs × 4 hours = 40 hours.

[1290] 10 NRSROs × 1 hour = 10 hours.

[1291] *See* Public Law 111–203 § 938(a)(1).

[1292] *See* Public Law 111–203 § 938(a)(2).

[1293] *See* Public Law 111–203 § 938(a)(3).

[1294] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[1295] *See* proposed paragraph (b)(2) of new Rule 17g–8.

[1296] *See* proposed paragraph (b)(1) of new Rule 17g–8.

[1297] 17 CFR 240.17g–2.

[1298] *See* proposed new paragraph (b)(13) to Rule 17g–2; *see also* Section II.F.2 of this release for a more detailed discussion of this proposal.

2. Costs

The Commission preliminarily estimates that the Commission's exercise of rulemaking discretion with respect to proposed paragraph (b) of new Rule 17g–8 would impose incremental costs. However, the Commission preliminarily estimates that the costs discussed below resulting from proposed paragraph (b) of new Rule 17g–8 would be attributable largely to the rulemaking mandated by Dodd-Frank Act [1299] and that the incremental costs would be minimal.

As discussed in above in Section IV.D.6 with respect to the PRA, the Commission preliminarily estimates each NRSRO would spend an average of approximately 200 hours establishing the policies and procedures that would be required under paragraph (b) of proposed new Rule 17g–8, resulting in an industry-wide one-time hour burden of 2,000 hours.[1300] In addition, as discussed in above in Section IV.D.6 with respect to the PRA, the Commission preliminarily estimates an NRSRO would spend an average of approximately 50 hours annually reviewing and updating those policies and procedures, resulting in an industry-wide annual burden of 500 hours.[1301]

The Commission preliminarily estimates that, although the costs resulting from proposed new paragraph (b)(14) of new Rule 17g–2 would be attributable to the Commission's discretionary rulemaking, those incremental costs would be minimal. As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminary believes applying the recordkeeping requirements of Rule 17g–2 to five new types of records would result in one-time and annual hour burdens for NRSROs in connection with updating their record retention policies and procedures to account for and retain these new records. As discussed above in Section IV.D.3 of this release with respect to the PRA, based on staff experience, the Commission preliminarily estimates that the additional one-time hour burden for each NRSRO to update its record retention policies and procedures to account for the new records that would need to be retained under proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2 would be 20 hours. Based on that estimate, the Commission preliminary believes that the average one-time hour burden attributable to proposed new paragraph (b)(14) of Rule 17g–2 would be approximately 4 hours per NRSRO, resulting in an industry-wide hour burden of approximately 40 hours.[1302]

As discussed above in Section IV.D.3 of this release with respect to the PRA, the Commission preliminarily estimates it would take an average of approximately one hour each year for an NRSRO to retain updated versions of the information required pursuant to proposed new paragraph (b)(14) of Rule 17g–2, resulting in an industry-wide hour burden of 10 hours.[1303]

The Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed paragraph (b) of new Rule 17g–8.

M. Annual Report of Designated Compliance Officer

Section 932(a)(5) of the Dodd-Frank Act amended Section 15E(j) of the Exchange Act to re-designate paragraph (j) as paragraph (j)(1) and to add new paragraphs (j)(2) through (j)(5).[1304] Section 15E(j)(1) of the Exchange Act contains a self-executing provision that an NRSRO designate an individual responsible for administering the policies and procedures that are required to be established pursuant to Sections 15E(g) and (h) of the Exchange Act,[1305] and for compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission under Section 15E of the Exchange Act.[1306] Section 15E(j)(5)(A) of the Exchange Act requires the designated compliance officer to submit to the NRSRO an annual report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO that includes: (1) A description of any material changes to the code of ethics and conflict of interest policies of the NRSRO; and (2) a certification that the report is accurate and complete.[1307] Section 15E(j)(5)(B) of the Exchange Act provides that the NRSRO shall file the report required pursuant to Section 15E(j)(5)(A) together with the financial report that is required to be submitted to the Commission under Section 15E of the Exchange Act.[1308]

As discussed above in Section II.A.3 of this release, Rule 17g–3 requires an NRSRO to submit five or, in certain cases, six separate reports not more than 90 days after the end of the NRSRO's fiscal year and identifies the reports to be submitted to the Commission.[1309] In order to further clarify the self-executing requirement in Section 15E(j)(5)(B) of the Exchange Act, the Commission is proposing to amend Rule 17g–3 to identify the annual report of the designated compliance officer as one of the reports that must be submitted to the Commission.[1310] Specifically, the Commission proposes adding a new paragraph (a)(8) to Rule 17g–3 to identify the report on the compliance of the NRSRO with the securities laws and the policies and procedures of the NRSRO required pursuant to Section 15E(j)(5)(B) of the Exchange Act.[1311] The Commission preliminarily estimates that the costs and benefits of this proposal are entirely attributable to the mandates of the Dodd-Frank Act, and are not a result of decisions made by the Commission to fulfill the mandates of the Dodd-Frank Act within its permitted discretion. Proposed new paragraph (a)(8) to Rule 17g–3 is intended only to clarify how an NRSRO must adhere to the self-executing provisions in Section 15E(j)(5)(B) of the Exchange Act and would result in no additional costs. Moreover, the Commission is not proposing to add any additional requirements with respect to the filing other than the proposed requirement that this report and the other annual reports be filed through the EDGAR system, which is addressed separately below.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with proposed new paragraph (a)(8) to Rule 17g–3.

[1299] *Compare* Public Law 111–203 § 938, *with* proposed new Rule 17g–9.

[1300] 10 NRSROs × 200 hours = 2000 hours.

[1301] 10 NRSROs × 50 hours = 500 hours.

[1302] 20 hours/5 new required records = 4 hours; 10 NRSROs × 4 hours = 40 hours.

[1303] 10 NRSROs × 1 hour = 10 hours.

[1304] *See* 15 U.S.C. 78o–7(j)(1) through (5).

[1305] *See* 15 U.S.C 780–7(g) and (h).

[1306] *See* 15 U.S.C. 78o–7(j)(1).

[1307] *See* 15 U.S.C. 78o–7(j)(5)(A).

[1308] *See* 15 U.S.C. 78o–7(j)(5)(B).

[1309] *See* 17 CFR 240.17g–3(a)(1)–(6). As discussed above in Section II.A.3 of this release, the Commission is proposing that Rule 17g–3 be amended to add a new paragraph (a)(7) to implement Section 15E(c)(3)(B) of the Exchange Act by requiring an NRSRO to file the annual internal controls report. *See* 15 U.S.C. 78o–7(c)(3)(B).

[1310] *See* proposed new paragraph (a)(8) of Rule 17g–3.

[1311] *Id.*

N. Electronic Submission of Form NRSRO and the Rule 17g–3 Annual Reports

The Commission is proposing that certain Form NRSRO submissions and all Rule 17g–3 annual report submissions be submitted to the Commission using the EDGAR system. In order to implement this requirement, the Commission is proposing amendments to Rule 101 of Regulation S–T to require the electronic submission using the EDGAR system of Form NRSRO pursuant to paragraphs (e), (f), and (g) of Rule 17g–1 and the annual reports pursuant Rule 17g–3.[1312] The Commission also is proposing to amend Rule 201 of Regulation S–T, which governs temporary hardship exemptions from electronic filing, to make this exemption unavailable for NRSRO submissions.[1313]

1. Benefits

One of the primary goals of the EDGAR system since its inception is to facilitate the rapid dissemination of financial and business information in connection with filings the Commission receives. Although paragraph (i) of Rule 17g–1 currently requires NRSROs to make the public portions of their current Form NRSROs publicly available within 10 business days after submission to the Commission, the Commission believes that having all such information available immediately upon submission in one location would make the information more easily available and searchable to investors and other users of credit ratings. Further, the Commission believes that submissions made to the Commission are more valuable to investors and other users of credit ratings if they are available in electronic form and that adding the Form NRSRO submissions to the EDGAR database would provide a more complete picture for the public. The Commission preliminarily estimates that, as a result of the proposals, the EDGAR page of the Commission's Web site,[1314] in conjunction with the NRSRO page of the Commission's Web site,[1315] would be a comprehensive source from which to find most public information submitted to the Commission, as well as other information, related to NRSROs. The Commission preliminarily believes that the electronic submission of Form NRSRO would benefit investors and other users of credit ratings by increasing the efficiency of retrieving and comparing NRSRO public submissions and enabling the investors and other users of credit ratings to access information more quickly.

In addition, while the Rule 17g–3 annual reports would not be made public on EDGAR, having them submitted on EDGAR would assist the Commission in its oversight of NRSROs. For example, Commission examiners could easily retrieve the annual reports of a specific NRSRO to prepare for an examination. Moreover, having these records submitted and stored through EDGAR in a centralized location would assist the Commission from a records management perspective by establishing a more automated storage process and creating efficiencies in terms of reducing the volume of paper submissions that must be manually processed and stored.

Moreover, the Commission preliminarily believes that the electronic submission of the Form NRSROs and the Rule 17g–3 annual reports would benefit NRSROs. For example, NRSROs would avoid the uncertainties, delay, and expense related to the manual delivery of paper submissions. Further, NRSROs would benefit from no longer having to submit multiple paper copies of these submissions to the Commission.

The Commission preliminarily believes that the proposed requirement that Form NRSROs and Exhibits 1 through 9 and the Rule 17g–3 annual reports be submitted through the EDGAR system would promote efficiency. As noted above, the proposal would provide a central location for an investor or other user of credit ratings to access the Forms and Exhibits. It also would assist the Commission staff in storing and accessing these records in furtherance of the Commission's NRSRO oversight function. Furthermore, it would provide NRSROs with a more efficient way to submit these forms and reports to the Commission.

2. Costs

The Commission preliminarily estimates that, although the Commission's exercise of rulemaking discretion with respect to the proposed amendments to Rules 101 and 201 of Regulation S–T, Rule 17g–1, and Rule 17g–3 would impose incremental costs, those incremental costs would be minimal.

As discussed in Section IV.D.1 of this release with respect to the PRA, the Commission preliminarily estimates that each NRSRO would spend an average of approximately 5 hours becoming familiar with the EDGAR filing system and completing and submitting Form ID.[1316] The Commission preliminarily estimates that the annual cost attributable to submitting the Form NRSROs and Rule 17g–3 annual reports through the EDGAR system would be no greater than the annual costs attributable to submitting them in paper form.

The Commission preliminarily believes any incremental cost resulting from the amendments would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with the proposed amendments to Rules 101 and 201 of Regulation S–T, Rule 17g–1, and Rule 17g–3.

O. Other Amendments

The Commission is proposing additional amendments to several of the NRSRO rules in response to amendments the Dodd-Frank Act made to sections of the Exchange Act that authorize or otherwise are relevant to these rules. The Commission preliminarily estimates that these proposals would not result in any one-time or annual incremental costs to NRSROs. Furthermore, the Commission preliminarily believes these proposals would benefit NRSROs and Commission staff be making terms in Commission rules applicable to NRSROs consistent with terms in Section 15E of the Exchange. This could promote greater clarity as to the requirements in the rules and remove potential ambiguity caused by inconsistent terms.

The Commission preliminarily believes that the proposals would promote efficiency. As noted above, the proposals would be designed to promote greater clarity as to the requirements in the rules and remove potential

[1312] *See* proposed amendment of Rule 101 of Regulation S–T (17 CFR 231.101); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[1313] *See* proposed amendment of Rule 201 of Regulation S–T (17 CFR 231.201); *see also* Section II.L of this release for a more detailed discussion of this proposal.

[1314] *http://www.sec.gov/investor/pubs/edgarguide.htm.*

[1315] *http://www.sec.gov/divisions/marketreg/ratingagency.htm.*

[1316] An NRSRO would need to complete Form ID in order to be eligible to submit documents using the EDGAR system. However, completing Form ID is a simple process. The Commission has noted in the past that the burden associated with Form ID is 15 minutes. *See* Securities Exchange Act Release No. 57280 (Feb. 6, 2008), 73 FR 10592, 10610 (Feb. 27, 2008). Thus, the Commission preliminarily estimates that the one-time hour burden per NRSRO associated with the filing of Form ID would be 15 minutes, resulting in an industry-wide burden of 1.5 hours.

ambiguity caused by inconsistent terms. In addition, as discussed above, the Commission preliminarily estimates that the proposals would not result in any one-time or annual incremental costs to NRSROs and would have substantial benefits. Consequently, the Commission preliminarily believes that the proposals would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

1. Changing "Furnish" To "File"

In accordance with the Dodd-Frank Act, the Commission is proposing amending certain provisions of Rule 17g–1 and Rule 17g–3 to replace the word "furnish" with the word "file".[1317] The Commission also is proposing to make conforming amendments to Form NRSRO and the instructions for Form NRSRO.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

2. Amended Definition of "NRSRO"

The definition of "nationally recognized statistical rating organization" in Section 3(a)(62) of the Exchange Act, prior to being amended by the Dodd-Frank Act, included a condition in Section 3(a)(62)(A) that the entity "has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under Section 15E".[1318] Section 932(b) of the Dodd-Frank Act struck subparagraph (A) of Section 3(a)(62).[1319] Form NRSRO contains a definition of "NRSRO" that tracks Section 3(a)(62) as originally enacted. The Commission proposes amending this definition to conform it to Section 3(a)(62) as amended by the Dodd-Frank Act.[1320] The Commission does not believe these proposals would result in any incremental costs to NRSROs.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

3. Definition of Asset-Backed Security

Section 941(a) of the Dodd-Frank Act amended Section 3 of the Exchange Act to add Section 3(a)(77), which defines "asset-backed security."[1321] In response, the Commission is proposing that certain language in Exchange Act Rules 17g–2(a)(2)(iii); 17g–2(a)(7); 17g–5(a)(3); 17g–5(b)(9); 17g–6(a)(4); and Form NRSRO be amended to reflect this new definition.[1322] The Commission preliminarily estimates that these proposals would result in no incremental costs to NRSROs.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

4. Other Amendments to Form NRSRO

The Commission is proposing a number of additional amendments to the Instructions to Form NRSRO to clarify certain requirements because the instructions, as written, have created some confusion among NRSROs. The Commission preliminarily estimates that these proposals would not result in any one-time or annual incremental costs to NRSROs as they would clarify existing requirements (not create new requirements). Furthermore, the Commission preliminarily believes these proposals would benefit NRSROs and Commission staff by addressing parts of the instructions that have led to inconsistent interpretations among the NRSROs as to the requirements.

The Commission preliminarily believes that the proposals would promote efficiency. As noted above, the proposals would be designed to promote greater clarity as to the requirements in the instructions. In addition, as discussed above, the Commission preliminarily estimates that the proposals would not result in any one-time or annual incremental costs to NRSROs and would have substantial benefits. Consequently, the Commission preliminarily believes that the proposals would not impact competition or impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

a. Clarification With Respect to Items 6 and 7

The Commission is proposing amendments to Form NRSRO and the Instructions for Form NRSRO to remove potential ambiguity as to how an applicant and NRSRO must determine the approximate number of credit ratings outstanding for the purposes of Items 6 and 7. In particular, the Commission is proposing to amend the text in Items 6.A and 7.A of Form NRSRO to clarify that an applicant or NRSRO must provide the approximate number of obligors, securities, and money market instruments in each class of credit ratings for which the applicant or NRSRO has an outstanding credit rating.[1323]

In addition, the Commission is proposing to amend Instruction H to Form NRSRO (as it relates to Items 6.A and 7.A) in four ways. First, in conformity with the proposed amendments to the text of Items 6.A and 7.A in the Form, the Instructions would be amended to provide that the applicant or NRSRO must, for each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the applicant or NRSRO presently has a credit rating outstanding as of the date of the application (Item 6.A) or had a credit rating outstanding as of the end of the most recently ended calendar year (Item 7.A).

Second, Instruction H would be amended to provide that the applicant or NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. This proposed instruction would be designed to clarify that each security or money market instrument of an issuer must be included in the count if it is assigned a credit rating by the applicant or NRSRO.

Third, Instruction H would be amended to provide that the applicant or NRSRO must not include an obligor,

[1317] *See* Section II.M.1 of this release.

[1318] *See* Section 3(a)(62)(A) of the Exchange Act (15 U.S.C. 78c(a)(62)(A)) added by the Rating Agency Act of 2006.

[1319] The Dodd-Frank Act did not, however, amend Section 15E(a)(1)(C), which requires that the certifications from qualified institutional buyers that are required to be submitted with an application for registration as an NRSRO under Section 15E(a)(1)(B), include a representation that the qualified institutional buyer "has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors."

[1320] *See* Section II.M.2 of this release.

[1321] 15 U.S.C. 78c(a)(77).

[1322] *See* Section II.M.3 of this release.

[1323] *See* proposed amendments to the text in Items 6.A and 7.A respectively.

security, or money market instrument in more than one class of credit rating. In other words, the applicant or NRSRO cannot double count an obligor, security, or money market instrument by including it in total credit ratings outstanding for two or more classes. Fourth, Instruction H would be amended to provide that the applicant or NRSRO must include in the class of credit ratings described in Section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in Section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. As discussed above in Section II.M.3 of this release, Section 3(a)(62)(B)(iv) contains a narrower definition of "asset-backed security" than the Commission uses for the purposes of its NRSRO rules.[1324]

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

b. Clarification With Respect to Exhibit 8

The Commission proposes to amend Instruction H to Form NRSRO as it relates to Exhibit 8. Exhibit 8 requires an applicant and NRSRO to provide the number of credit analysts it employs and the number of credit analyst supervisors. The Commission is proposing two amendments to the instructions for Exhibit 8. The first amendment would delete a parenthesis in the instructions that provides that the applicant or NRSRO should "see definition below" of the term "credit analyst." There is no such definition. The second amendment would clarify that the applicant or NRSRO, in providing the number of credit analysts, should include the number of credit analyst supervisors. This would be designed to ensure that the disclosures in Form NRSRO are comparable across NRSROs by avoiding the situation in which some NRSROs include credit analyst supervisors in the total number of credit analysts and some NRSROs do not include credit analyst supervisors in that amount.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

c. Clarification With Respect to Exhibits 10 through 13

The Commission proposes to amend Instruction H in several places to add a "Note" instructing that after registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Rule 17g–1(i) and they should not be updated with the filing of the annual certification. The "Note" further would instruct that similar information is required in the annual reports that must be filed with the Commission not more than 90 days after the end of each fiscal year under Rule 17g–3.[1325]

The Commission preliminarily believes that none of these proposed clarifications entail any changes to the existing requirements of the Commission's rules, but instead merely explain more clearly what those rules already require. Therefore, Commission does not attribute any costs or benefits to these clarifications.

Request for Comment

The Commission requests comment on all aspects of the costs and benefits associated with these proposed amendments, including whether they would result in one-time or annual incremental costs to NRSROs.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"[1326] the Commission must advise OMB as to whether the proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results or is likely to result in: (1) An annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment or innovation. If a rule is "major," its effectiveness will generally be delayed for 60 days pending Congressional review.

The Commission requests comment on the potential impact of the proposed amendments to existing rules and proposed new rules on the economy on an annual basis, on the costs or prices for consumers or individual industries, and on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) in accordance with Section 603(a) of the Regulatory Flexibility Act (RFA).[1327] This IRFA relates to the Commission's proposed new requirements for NRSROs that would result from the amendments to Rule 101 of Regulation S–T, Rule 201 of Regulation S–T, Rule 17g–1, Rule 17g–2, Rule 17g–3, Rule 17g–5, Rule 17g–6, Rule 17g–7, and Form NRSRO, and proposed new Rule 17g–8 and new Rule 17g–9. In addition, the IRFA relates to the Commission's proposed new requirements for providers of third-party due diligence services that would result from new Rule 17g–10 and new Form ABS Due Diligence–15E. Finally, this IRFA relates to the Commission's proposed new requirements for issuers and underwriters of Exchange Act-ABS that would result from the amendments to Rule 314 of Regulation S–T and Form ABS–15G, and new Rule 15Ga–2.

A. Reasons and Objectives

Section II of this release describes the reasons and objectives of the proposed amendments to existing rules and proposed new rules. In addition, Section IV.B of this release describes the intended use of the collection of information requirements that would result from the proposed amendments to existing rules and proposed new rules. Moreover, as described in Section II of this release, these proposed amendments and proposed new rules would implement rulemaking mandated in Title IX, Subtitle C of the Dodd-Frank Act.[1328] In Section 931 of Title IX, Subtitle C of the Dodd-Frank Act, Congress made the following findings:

- Because of the systemic importance of credit ratings and the reliance placed on credit ratings by individual and institutional investors and financial regulators, the activities and performances of credit rating agencies, including NRSROs, are matters of national public interest, as credit rating agencies are central to capital formation, investor confidence, and the efficient

[1324] *Compare* 15 U.S.C. 78c(a)(62)(B)(iv) with: Instructions for Exhibit 1 to Form NRSRO; paragraphs (a)(2)(iii), (a)(7), and (b)(9) of Rule 17g–2; paragraph (a)(6) of Rule 17g–3; paragraphs (a)(3) and (b)(9) of Rule 17g–5; and paragraph (a)(4) of Rule 17g–6.

[1325] *See* "Notes" proposed to be added to Instruction H to Form NRSRO.

[1326] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[1327] *See* 5 U.S.C. 603(a).

[1328] *See* Public Law 111–203 §§ 931–939H.

performance of the United States economy.[1329]

• Credit rating agencies, including NRSROs, play a critical "gatekeeper" role in the debt market that is functionally similar to that of securities analysts, who evaluate the quality of securities in the equity market, and auditors, who review the financial statements of firms. Such role justifies a similar level of public oversight and accountability.[1330]

• Because credit rating agencies perform evaluative and analytical services on behalf of clients, much as other financial "gatekeepers" do, the activities of credit rating agencies are fundamentally commercial in character and should be subject to the same standards of liability and oversight as apply to auditors, securities analysts, and investment bankers.[1331]

• In certain activities, particularly in advising arrangers of structured financial products on potential ratings of such products, credit rating agencies face conflicts of interest that need to be carefully monitored and that therefore should be addressed explicitly in legislation in order to give clearer authority to the Securities and Exchange Commission.[1332]

• In the recent financial crisis, the ratings on structured financial products have proven to be inaccurate. This inaccuracy contributed significantly to the mismanagement of risks by financial institutions and investors, which in turn adversely impacted the health of the economy in the United States and around the world. Such inaccuracy necessitates increased accountability on the part of credit rating agencies.[1333]

B. Legal Basis

The Commission's proposed amendments to existing rules and proposed new rules are made pursuant to the Exchange Act,[1334] particularly Sections 15E, 17(a) and 36 of the Exchange Act,[1335] and Sections 936 and 938(a) of the Dodd-Frank Act.[1336]

C. Small Entities Subject to the Rule

1. NRSROs and Providers of Third-Party Due Diligence Services

Under section 601(3) of the RFA, the term "small business" is defined as having "the same meaning as the term 'small business concern' under Section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."[1337] The Commission's rules do not define "small business" or "small organization" with respect to NRSROs. However, paragraph (a) of Rule 0–10 provides that for purposes of the RFA, a small entity "[w]hen used with reference to an 'issuer' or a 'person' other than an investment company" means "an 'issuer' or 'person' that, on the last day of its most recent fiscal year, had total assets of $5 million or less."[1338] The Commission has stated in the past that an NRSRO with total assets of $5 million or less would qualify as a "small" entity for purposes of the RFA.[1339] The Commission continues to believe this threshold of total assets of $5 million or less would qualify an NRSRO as "small" for purposes of the RFA. In addition, the Commission preliminarily believes this would be an appropriate threshold for determining whether a provider of third-party due diligence services is "small" for purposes of the RFA.

Currently, there are 10 NRSROs and, based on their most recently filed annual reports pursuant to Rule 17g–3, one NRSRO is a small entity under the above definition. For purposes of the PRA, the Commission preliminarily estimates that there will be 10 providers of third-party due diligence services subject to the proposed new requirements.[1340] Of these 10 respondents, the Commission estimates that all 10 would be "small" entities.

2. Issuers and Underwriters

The proposing release for Form ABS–15G certified that the form would not have a significant economic impact on a substantial number of small entities.[1341] As discussed above in Section V.I.2 of this release, the Commission believes that the costs to the issuers and underwriters subject to proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G would be less than those arising from the adoption of Form ABS–15G. The Commission, therefore, certifies pursuant to 5 U.S.C. 605(b) that proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to disclosure requirements for Exchange Act-ABS. As noted above, Rule 0–10(a)[1342] defines an issuer, other than an investment company, to be a "small business" or "small organization" if it had total assets of $5 million or less on the last day of its most recent fiscal year. The Commission's data indicates that only one sponsor could meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.[1343] Accordingly, the Commission does not believe that proposed new Rule 15Ga–2 and the proposed amendments to Form ABS–15G, if adopted, would have a significant economic impact on a substantial number of small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments and proposed new rules would impose certain reporting, recordkeeping, and other compliance requirements on small NRSROs and small providers of third-party due diligence services. Preliminary estimates of the costs attributable to these proposals are discussed in detail in Section V of this release. As discussed in Section V of this release, the Commission preliminarily estimates that the costs are largely attributable to rulemaking mandates in the Dodd-Frank Act and not to the exercise of Commission discretionary rulemaking.

The Commission is providing summary information below about the preliminary cost estimates in Section V of this release to estimate the impact the proposals would have on the one small NRSRO and the 10 small providers of third-party due diligence services. In some cases, the Commission preliminarily believes it is appropriate to estimate the one-time and annual costs per small NRSRO using average costs across all NRSROs that would be subject to the proposed amendments and new rules. The NRSROs vary, in terms of size and complexity, from

[1329] Public Law 111–203 § 931(1).

[1330] Public Law 111–203 § 931(2).

[1331] Public Law 111–203 § 931(3).

[1332] Public Law 111–203 § 931(4).

[1333] Public Law 111–203 § 931(5).

[1334] 15 U.S.C. 78a *et seq.*

[1335] 15 U.S.C. 78o–7, 78q and 78mm.

[1336] Public Law 111–203 §§ 936 and 938(a).

[1337] 5 U.S.C. 601(3).

[1338] 17 CFR 240.0–10(a).

[1339] *See e.g., Oversight of Credit Rating Agencies Registered as Nationally Recognized Statistical Rating Organizations,* 72 FR 33618 (June 18, 2007); *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 6481 (Feb. 9, 2009); and *Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* 74 FR at 63863 (Dec. 4, 2009).

[1340] *See* Section VI.C of this release.

[1341] *See Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act,* Securities Act Release No. 9148 (Oct. 4, 2010), 75 FR 62718 at 62734 (Oct. 13, 2010).

[1342] 17 CFR 240.0–10(a).

[1343] This is based on data from Asset-Backed Alert.

small entities that employ less than 20 credit analysts to complex global organizations that employ over a thousand credit analysts.[1344] Given the variance in size between the largest NRSROs and the smallest NRSROs, the average costs are skewed higher because the largest firms currently dominate in terms of size and the volume of credit rating activities.[1345] In other cases, as described below, the Commission preliminarily believes it is appropriate to estimate the one-time and annual costs per small NRSRO based on the number of credit ratings outstanding or the number of credit analysts employed by the seven smaller NRSROs.[1346] In a cost estimate based on the number of credit ratings outstanding, the Commission preliminarily proposes to use the number of credit ratings outstanding of the 7 smaller NRSROs.[1347] In a cost estimate based on the number of credit analysts, the Commission preliminarily proposes to use the number of credit analysts employed by the 7 smaller NRSROs.[1348]

As discussed above in Section V.A.2 of this release, the Commission preliminarily estimates that the proposed amendments to Rule 17g–3 would result in one-time and annual costs to NRSROs.[1349] In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each NRSRO of approximately $40,000 and an average annual cost to each NRSRO of approximately $60,950.[1350]

As discussed above in Section V.B.2 of this release, the Commission preliminarily estimates that the proposed amendments to Rule 17g–5 would result in one-time and annual costs to each NRSRO.[1351] Moreover, the Commission provides separate preliminary cost estimates for the three larger NRSROs and the seven smaller NRSROs. In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each of the seven smaller NRSROs of approximately $15,867 and an average annual cost to each of the seven smaller NRSROs of approximately $4,587.[1352]

As discussed above in Section V.C.2 of this release, the Commission preliminarily estimates proposed paragraph (c) to new Rule 17g–8 would result in one-time and annual costs to each NRSRO.[1353] In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each NRSRO of approximately $27,300 and an average annual cost to each NRSRO of approximately $6,825.[1354]

As discussed above in Section V.E.2 of this release, the Commission preliminarily estimates that the proposed amendments to the instructions to Exhibit 1 of Form NRSRO would result in one-time and annual costs to each NRSRO.[1355] Based on the total number of ratings outstanding across all 10 NRSROs, the Commission preliminarily estimates an industry-wide one-time cost of approximately $735,680 and an industry-wide annual cost of approximately $367,840.[1356] Moreover, because of the wide variance in the number of credit ratings outstanding among the NRSROs, the Commission preliminarily believes that it is appropriate to allocate these costs to NRSROs based on the number of credit ratings each has outstanding (although larger NRSROs may realize economies of scale). Consequently, the Commission preliminarily estimates that the proposal would result in an average one-time cost to the small NRSRO of approximately $2,913 and an average annual cost to the small NRSRO of approximately $1,457.[1357]

As discussed above in Section V.E.2 of this release, the Commission preliminarily estimates that the proposed amendments to Rule 17g–1 would result in one-time and annual costs to each NRSRO.[1358] First, the Commission preliminarily estimates that the proposal to require an NRSRO to it make its Form NRSRO and Exhibits 1 through 9 freely available on an "easily accessible" portion of its corporate Internet Web site would result in an average one-time cost to each NRSRO of approximately $1,125.[1359] Second, the Commission preliminarily estimates that the proposal to require an NRSRO to provide, when requested, a written copy of Exhibit 1 would result in an average one-time cost to each NRSRO of approximately $13,104 and an average annual cost to each NRSRO of approximately $18,291.[1360]

As discussed above in Section V.F.2 of this release, the Commission preliminarily estimates that proposed new paragraph (b) of Rule 17g–7 would result in one-time and annual costs to each NRSRO.[1361] First, the Commission preliminarily estimates that the proposal to make the ratings histories available on an "easily accessible" portion of the NRSRO's corporate Internet Web site would result in an average one-time cost to each NRSRO of approximately $1,125.[1362] Second, the Commission preliminarily estimates that the proposed enhancements to the current ratings history disclosure requirements would result in an average one-time cost to each NRSRO of approximately $30,375 and an average

[1344] *See, e.g., Annual Report on Nationally Recognized Statistical Rating Organizations. Commission* (Jan. 2011), pp. 4–9.

[1345] As discussed above in Section IV.D of this release, based on data collected from the NRSROs in their Form NRSROs and Rule 17g–3 annual reports, the Commission has calculated an HHI number using the number credit ratings outstanding per NRSRO and that number is 3,495, which is equivalent to there being approximately 2.86 equally sized firms. The HHI using earnings reported by NRSROs in the Rule 17g–3 annual reports is 3,926, which the equivalent of 2.55 equally sized firms.

[1346] The seven smaller NRSROs are: A.M. Best Company, Inc., DBRS Ltd., Egan-Jones Rating Company, Japan Credit Rating Agency, Ltd., Kroll Bond Rating Agency, Inc. (formerly LACE Financial Corp.), Rating and Investment Information, Inc., and Realpoint LLC. *See* Figures 2 and 3. The small NRSRO is one these NRSROs.

[1347] 80,648 (total credit ratings outstanding for the seven smaller NRSROs)/2,905,825 (total credit ratings outstanding for all ten NRSROs)/7 (the number of smaller NRSROs) = 0.00396. *See* Figure 2.

[1348] 370 (the total number of credit analysts employed by the seven smaller NRSROs)/3,520 (the total number of credit analysts employed by all ten NRSROs)/7 (the number of smaller NRSROs) = .01502. *See* Figure 3.

[1349] *See* proposed new paragraph (a)(7) and proposed amendments to paragraph (b) of Rule 17g–3; *see also* Section II.A.1 of this release for a more detailed discussion of these provisions.

[1350] *See* Section V.A.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1351] *See* proposed new paragraph (c)(8) of Rule 17g–5; *see also* Section II.B.1 of this release for a more detailed discussion of this proposal.

[1352] *See* Section V.B.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1353] *See* proposed paragraph (c) of new Rule 17g–8; *see also* Section II.C.1 of this release for a more detailed discussion of this proposal.

[1354] *See* Section V.C.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1355] *See* proposed amendments to Instruction H to Form NRSRO (as it relates to Exhibit 1); *see also* Section II.E.1.a of this release for a more detailed discussion of this proposal.

[1356] *See* Section V.E.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1357] $735,680 × .00396 = $2,913.29, rounded to $2,913; $367,840 × .00396 = $1,456.65, rounded to $1,457.

[1358] *See* proposed amendments to paragraph (i) of Rule 17g–1; *see also* Section II.E.1.b of this release for a more detailed discussion of this proposal.

[1359] *See* Section V.E.2 of this release for a more detailed discussion of the basis for this cost estimate.

[1360] *Id.*

[1361] *See* proposed new paragraph (b) of Rule 17g–7; *see also* Section II.E.2 of this release for a more detailed discussion of this proposal.

[1362] *See* Section V.F.2 of this release for a more detailed discussion of the basis for this cost estimate.

annual cost to each NRSRO of approximately $10,125.[1363]

As discussed above in Section V.G.2 of this release, the Commission preliminarily estimates that paragraph (a) of proposed new Rule 17g–8 would result in one-time and annual costs to each NRSRO.[1364] In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each NRSRO of approximately $54,600 and an average annual cost to each NRSRO of approximately $13,650.[1365]

As discussed above in Section V.H.2 of this release, the Commission preliminarily estimates that proposed new paragraph (a) of Rule 17g–7 would result in one-time and annual costs to each NRSRO.[1366] Based on the total number of ratings outstanding across all 10 NRSROs, the Commission preliminarily estimates an industry-wide one-time cost of approximately $15,237,500 and an industry-wide annual cost of approximately $115,580,930.[1367] Moreover, the Commission preliminarily estimates that the one-time and annual costs would vary considerably among NRSROs based on the number of credit ratings they issue and monitor and the number of classes and subclasses of credit ratings for which they issue and monitor credit ratings. Consequently, the Commission preliminarily estimates that the proposal would result in an average one-time cost to the small NRSRO of approximately $60,340 and an average annual cost to the small NRSRO of approximately $457,700.[1368]

As discussed above in Section V.K.2 of this release, the Commission preliminarily estimates that proposed new Rule 17g–9 would result in one-time and annual costs to each NRSRO.[1369] Based on the total number of credit rating analysts employed by the 10 NRSROs, the Commission preliminarily estimates an industry-wide one-time cost of approximately $5,363,000 and an industry-wide annual cost of approximately $1,072,720.[1370] Moreover, the Commission preliminarily estimates that these costs would be allocated to the 10 NRSROs based on the number of credit analysts each employs. Consequently, the Commission preliminarily estimates that the proposal would result in an average one-time cost to the small NRSRO of approximately $80,552 and an average annual cost to the small NRSRO of approximately $16,112.[1371]

As discussed above in Section V.L.2 of this release, the Commission preliminarily estimates that paragraph (b) of proposed new Rule 17g–8 would result in one-time and annual costs to each NRSRO.[1372] In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each NRSRO of approximately $54,600 and an average annual cost to each NRSRO of approximately $13,650.[1373]

As discussed above in Section V.N.2 of this release, the Commission preliminarily estimates that proposed requirement to file certain Form NRSROs (and Exhibits 1 through 9) and the Rule 17g–3 annual reports with the Commission through the EDGAR system would result in one-time costs to each NRSRO.[1374] In particular, the Commission preliminarily estimates that the proposal would result in an average one-time cost to each NRSRO of approximately $1,365.[1375]

As discussed above in Sections V.A.2, V.C.2, V.G.2, V.K.2, and V.L.2 of this release, the Commission has proposed applying the recordkeeping requirements of Rule 17g–2 to five new types of records.[1376] The Commission preliminarily estimates that these proposals would result in one-time and annual costs to each NRSRO. In particular, the Commission preliminarily estimates an average one-time cost to each NRSRO of approximately $5,460 and an average annual cost to each NRSRO of approximately $1,365.[1377]

Finally, as discussed in Section V.J.2 of this release, the Commission preliminarily estimates that proposed new Rule 17g×10 and proposed new Form ABS Due Diligence-15E would result in one-time and annual costs to providers of third-party due diligence services.[1378] In particular, the Commission estimates an average one-time cost to each provider of third-party due diligence services of approximately $91,425.[1379] In addition, the Commission preliminarily estimates that the annual cost resulting from these proposals would be based on the number of Exchange Act-ABS transactions issued per year. Consequently, the Commission preliminarily estimates that the industry-wide annual cost would be approximately $282,282.[1380] For this reason, the Commission preliminarily estimates that the average annual cost to each provider of third-party due diligence services would be approximately $28,228.[1381]

As noted above, the Commission preliminarily estimates that these costs largely are attributable to rulemaking mandates in the Dodd-Frank Act. The Commission also notes that the Dodd-Frank Act explicitly provides that the Commission's rulemaking make exceptions for small NRSROs in one instance.[1382] The Commission preliminary believes that the exercise of the Commission's discretionary rulemaking would not disproportionately affect small entities. The Commission preliminarily believes that the exercise of discretionary rulemaking strikes an appropriate balance between minimizing the burden on small entities and meeting the rulemaking mandates in the Dodd-Frank Act.

[1363] *See* Section V.F.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1364] *See* paragraph (a) of new Rule 17g–8; *see also* Section II.F.1 of this release for a more detailed discussion of this proposal.

[1365] *See* Section V.G.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1366] *See* proposed new paragraph (a) of Rule 17g–7 *see also* Sections II.G.1 through G.5 of this release for a more detailed discussion of this proposal.

[1367] *See* Section V.H.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1368] $15,237,500 × .00396 = $60,340.50, rounded to $60,340; $115,580,930 × .00396 = $457,700.48, rounded to $457,700.

[1369] *See* proposed new Rule 17g–9; *see also* Section II.I.1 of this release for a more detailed discussion of this proposal.

[1370] *See* Section V.K.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1371] $5,363,000 x .01502 = $80,552.26, rounded to $80,552; $1,072,720 x .01502 = $16,112.25, rounded to $16,112..

[1372] *See* paragraph (b) of proposed new Rule 17g–8; *see also* Section II.J.1 of this release for a more detailed discussion of this proposal.

[1373] *See* Section V.L.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1374] *See* proposed amendments to Regulation S–T, Rule 17g–1, and Rule 17g–3; *see also* Section II.L of this release for a more detailed discussion of this proposal.

[1375] *See* Section V.N.2 of this release for a more detailed discussion of the basis for this cost estimate.

[1376] *See* proposed new paragraphs (a)(9), (b)(12), (b)(13), (b)(14), and (b)(15) of Rule 17g–2; *see also* Sections II.A.2, II.C.2, II.F.2, II.I.2, and II.J.2 of this release, respectively, for a more detailed discussion of these proposals.

[1377] $1,092 × 5 = $5,460; $273 × 5 = $1,365. *See* Sections V.A.2, V.C.2, V.G.2, V.K.2, and V.L.2 of this release for a more detailed discussion of the basis for these cost estimates.

[1378] *See* proposed new Rule 17g–10 and proposed new Form ABS Due Diligence-15E; *see also* Sections II.H.2 and II.H.3 of this release, respectively, for a more detailed discussion of these proposals.

[1379] *See* Section V.J.2 of this release for a more detailed discussion of the basis for this cost estimate.

[1380] *Id.*

[1381] $282,282/10 small providers of third-party due diligence services = $28,228.20 (rounded to $28,228).

[1382] *See* Public Law 111–203 § 932(a)(4) and 15 U.S.C. 78o–7(h)(3)(B)(i).

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no Federal rules that duplicate, overlap, or conflict with the proposed rules.

F. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[1383] the Commission must consider certain types of alternatives, including: (1) The establishment of differing compliance or recording requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed rules, or any part of the proposed rules, for small entities.

The Commission preliminarily believes that the exercise of discretionary rulemaking with respect to the proposed amendments to existing rules and proposed new rules strike the appropriate balance between minimizing the burden on entities and allowing the Commission to meet its mandate under the Dodd-Frank Act. The Commission notes the Dodd-Frank Act explicitly mandated the Commission provide for exceptions for small NRSROs with respect to only one rulemaking and the Commission has proposed a rule amendment to implement this provision.[1384] Consequently, the Commission does not believe it is necessary or appropriate to establish different compliance or reporting requirements or timetables; clarify, consolidate, or simplify compliance and reporting requirements under the proposed amendments to existing rules and proposed new rules for small entities; or summarily exempt small entities from coverage of the rule, or any part of the rule. The Commission believes that it is inconsistent with the goals of the Dodd-Frank Act to use performance standards rather than design standards. Further, the Commission believes that it would be inconsistent with the purposes of the Dodd-Frank Act to exempt small entities from compliance with the proposed rules.

G. Request for Comment

The Commission generally requests comment on the certification and all aspects of its analysis in the IRFA. In addition, the Commission also seeks comment on the following:

1. Would the number of small entities that would be subject to the proposed requirements have any effects that have not been discussed?

2. Describe the nature of any effects on small entities subject to proposed requirements and provide empirical data to support the nature and extent of such effects.

3. Describe the compliance burdens and how they would affect small entities.

VIII. Statutory Authority

The Commission is proposing amendments to §§ 232.101, 232.201, 232.314, 240.17g–1, 240.17g–2, 240.17g–3, 240.17g–5, 240.17g–6, 240.17g–7, Form NRSRO, and Form ABS–15G and is proposing to adopt §§ 240.15Ga–2, 240.17g–8, 240.17g–9, 240.17g–10, and Form ABS Due Diligence-15E pursuant to the authority conferred by the Exchange Act, including Sections 15E, 17(a) and 36 (15 U.S.C. 78o–7, 78q, and 78mm), and pursuant to authority in Sections 936, 938, and 943 of the Dodd-Frank Act (Pub. L. 111–203 §§ 936, 938, and 943).

List of Subjects in 17 CFR Parts 232, 240, 249, and 249b

Brokers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

In accordance with the foregoing, the Commission proposes that Title 17, Chapter II of the Code of Federal Regulation be amended as follows.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

2. Section 232.101 is amended by adding paragraph (a)(1)(xiv) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Form NRSRO (§ 249b.300 of this chapter), and the information and documents in Exhibits 1 through 9 of Form NRSRO, filed with or furnished, as applicable, to the Commission pursuant to § 240.17g–1(e), (f), and (g) of this chapter and the annual reports filed with or furnished to, as applicable, the Commission pursuant to § 240.17g–3 of this chapter.

* * * * *

3. Section 232.201 is amended by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7, and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an application for an order under any section of the Investment Company Act (15 U.S.C. 80a–1 *et seq.*), an Interactive Data File (§ 232.11 of this chapter), or a Form NRSRO (§ 249b.300 of this chapter), and the information and documents in Exhibits 1 through 9 of Form NRSRO, filed with or furnished to, as applicable, the Commission pursuant to § 240.17g–1(e), (f), or (g) of this chapter, or the annual reports filed with or furnished to, as applicable, the Commission pursuant to § 240.17g–3 of this chapter, the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10, and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

4. Section 232.314 is amended by:

a. In the introductory text adding the phrase "or in response to Rule 15Ga–2 (§ 240.15Ga–2 of this chapter)" after the phrase "The information required in response to Rule 15Ga-1 (§ 240.15Ga–1 of this chapter)";

b. In paragraph (a), removing the words "Securities Exchange Act of 1934" and in their place inserting the word "Act"; and

c. In paragraph (b):

i. Adding the words "or Rule 15Ga–2" after the phrase "The information required by Rule 15Ga–1"; and

ii. Removing the words "Web site" and in their place inserting the word "website".

[1383] 5 U.S.C. 603(c).

[1384] *See* 15 U.S.C. 78o–7(h)(3)(B)(i) and proposed new paragraph (f) of Rule 17g–5; *see also* Section II.B.2 of this release for a more detailed discussion of this proposal.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 is amended by adding sectional authorities for §§ 240.15Ga–2, 240.17g–8, and 240.17g–9 to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et. seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

Section 240.15Ga–2 is also issued under sec. 943, Public Law 111–203, 124 Stat. 1376.

* * * * *

Section 240.17g–8 is also issued under sec. 938, Public Law 111–203, 124 Stat. 1376.

* * * * *

Section 240.17g–9 is also issued under sec. 936, Public Law 111–203, 124 Stat. 1376.

* * * * *

6. Section 240.15Ga–2 is added to read as follows:

§ 240.15Ga–2 Findings and conclusions of third-party due diligence reports.

(a) The issuer or underwriter of an offering of any asset-backed security (as that term is defined in Section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) shall furnish Form ABS–15G (§ 249.1400 of this chapter) if the security is to be rated by a nationally recognized statistical rating organization, containing the findings and conclusions of any third-party due diligence report obtained by the issuer or underwriter five business days prior to the first sale in the offering; however, if the issuer or underwriter receives a representation from a nationally recognized statistical rating organization that can be reasonably relied upon that the disclosure required by this paragraph will be publicly disclosed by the nationally recognized statistical rating organization five business days prior to the first sale in the offering in an information disclosure form generated pursuant to Rule 17g–7(a)(1) (§ 240.17g–7(a)(1) of this chapter) and included with the credit rating, the issuer or underwriter would not be required to furnish Form ABS–15G five days prior to the first sale in the offering.

(b) If the issuer or underwriter receives a representation pursuant to paragraph (a) of this section, but the nationally recognized statistical rating organization has not fulfilled its representation to publicly disclose the disclosure five business days prior to the first sale in the offering, the issuer or underwriter shall furnish Form ABS–15G two business days prior to the first sale in the offering.

(c) For purposes of paragraph (a) of this section, "third-party due diligence report" means any report containing findings and conclusions of any "due diligence services" as defined in Rule 17g–10(c)(1) (§ 240.17g–10(c)(1) of this chapter) performed by a third party.

Instruction to paragraph (a) of this section: The issuer or underwriter shall provide to the Commission, upon request, information regarding the manner in which the representation by the nationally recognized statistical rating organization was obtained and relied upon for purposes of this paragraph.

7. Section 240.17g–1 is amended by:

a. In paragraphs (a), (b), and (c) removing the phase "furnish the Commission with" wherever it appears and adding in its place the phrase "file with the Commission two paper copies of";

b. In paragraph (d), adding the phrase "two paper copies of" after the phrase "the applicant must furnish the Commission with"; and

c. Revising paragraphs (e), (f), (g), (h), and (i).

The revisions read as follows:

§ 240.17g–1 Application for registration as a nationally recognized statistical rating organization.

* * * * *

(e) *Update of registration.* A nationally recognized statistical rating organization amending materially inaccurate information in its application for registration pursuant to section 15E(b)(1) of the Act (15 U.S.C. 78o–7(b)(1)) must promptly file with the Commission an update of its registration on Form NRSRO that follows all applicable instructions for the Form. A Form NRSRO and the information and documents in Exhibits 1 through 9 of Form NRSRO filed under this paragraph must be filed electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(f) *Annual certification.* A nationally recognized statistical rating organization amending its application for registration pursuant to section 15E(b)(2) of the Act (15 U.S.C. 78o–7(b)(2)) must file with the Commission an annual certification on Form NRSRO that follows all applicable instructions for the Form not later than 90 days after the end of each calendar year. A Form NRSRO and the information and documents in Exhibits 1 through 9 of Form NRSRO filed under this paragraph must be filed electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(g) *Withdrawal from registration.* A nationally recognized statistical rating organization withdrawing from registration pursuant to section 15E(e)(1) of the Act (15 U.S.C. 78o–7(e)(1)) must furnish the Commission with a notice of withdrawal from registration on Form NRSRO that follows all applicable instructions for the Form. The withdrawal from registration will become effective 45 calendar days after the notice is furnished to the Commission upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors. A Form NRSRO furnished under this paragraph must be furnished electronically with the Commission in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(h) *Filing or furnishing Form NRSRO.* A Form NRSRO filed or furnished, as applicable, under any paragraph of this section will be considered filed with or furnished to, as applicable, the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form. Information filed or furnished, as applicable, on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law.

(i) *Public availability of Form NRSRO.* A nationally recognized statistical rating organization must make its current Form NRSRO and information and documents in Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet Web site within 10 business days after the date of the Commission order granting an initial application for registration as a nationally recognized statistical rating organization or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission a Form NRSRO under paragraphs (e), (f), or (g) of this section. In addition, a nationally recognized statistical rating organization must make its up-to-date Exhibit 1 to Form NRSRO freely available in writing to any individual who requests a copy of the Exhibit.

8. Section 240.17g–2 is amended by:

a. In paragraphs (a)(2)(iii) and (a)(7) introductory text, removing the words "or mortgage-backed";

b. Adding paragraph (a)(9);

c. Revising paragraph (b)(1);

d. In paragraph (b)(9), removing the words "or mortgage-backed";

e. Revising paragraph (b)(11);

f. Adding paragraphs (b)(12) through (15);

g. Re-designating paragraph (d)(1) as paragraph (d); and

h. Removing paragraphs (d)(2) and (d)(3);

The additions and revisions read as follows:

§ 240.17g–2 Records to be made and retained by nationally recognized statistical rating organizations.

(a) * * *

(9) A record documenting the policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) and § 240.17g–8(c) of this chapter.

* * * * *

(b) * * *

(1) Significant records (for example, bank statements, invoices, and trial balances) underlying the information included in the annual financial reports the nationally recognized statistical rating organization files with or furnishes to, as applicable, the Commission pursuant to § 240.17g–3 of this chapter.

* * * * *

(11) Form NRSROs (including Exhibits and accompanying information and documents) the nationally recognized statistical rating organization files with or furnishes to, as applicable, the Commission.

(12) The internal control structure the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A) of the Act (15 U.S.C. 78o–7(c)(3)(A)).

(13) The policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–8(a) of this chapter.

(14) The policies and procedures the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–8(b) of this chapter.

(15) The standards of training, experience, and competence for credit analysts the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to § 240.17g–9 of this chapter.

* * * * *

9. Section 240.17g–3 is amended by:

a. Revising the heading;

b. Revising the introductory text of paragraph (a);

c. In paragraph (a)(1) introductory text, removing the first word "Audited" and adding in its place the phrase "File with the Commission a financial report, as of the end of the fiscal year, containing audited";

d. In paragraph (a)(2) introductory text, removing the first word "If" and adding in its place the phrase "File with the Commission a financial report, as of the end of the fiscal year, containing, if";

e. In the Note to paragraph (a)(2), removing the word "furnished" and adding in its place the word "filed";

f. In the introductory texts to paragraphs (a)(3), (4), and (5), removing the first word "An" and adding in its place the phrase "File with the Commission an unaudited financial report, as of the end of the fiscal year,";

g. In paragraph (a)(6) introductory text, removing the first word "An" and adding in its place the phrase "Furnish the Commission with an unaudited report, as of the end of the fiscal year,";

h. In the Note to paragraph (a)(6), removing the words "or mortgage-backed";

i. Adding paragraphs (a)(7) and (8);

j. Revising paragraph (b);

k. Adding paragraphs (d) and (e).

The additions and revisions read as follows:

§ 240.17g–3 Annual financial and other reports to be filed or furnished by nationally recognized statistical rating organizations.

(a) A nationally recognized statistical rating organization must annually, not more than 90 calendar days after the end of its fiscal year (as indicated on its current Form NRSRO):

* * * * *

(7) File with the Commission an unaudited report, as of the end of the fiscal year, concerning the internal control structure the nationally recognized statistical rating organization is required to establish, maintain, enforce, and document pursuant to Section 15E(c)(3)(A) of the Act (15 U.S.C. 78o–7(c)(3)(A)) that contains:

(i) A description of the responsibility of management in establishing and maintaining an effective internal control structure; and

(ii) An assessment by management of the effectiveness of the internal control structure.

(8) File with the Commission an unaudited annual report on the compliance of the nationally recognized statistical rating organization with the securities laws and the policies and procedures of the nationally recognized statistical rating organization pursuant to Section 15E(j)(5)(B) of the Act (15 U.S.C. 78o–7(j)(5)(B)).

(b) The nationally recognized statistical rating organization must:

(1) Attach to the reports filed or furnished, as applicable, pursuant to paragraphs (a)(1) through (6) of this section a signed statement by a duly authorized person associated with the nationally recognized statistical rating organization stating that the person has responsibility for the reports and, to the best knowledge of the person, the reports fairly present, in all material respects, the financial condition, results of operations, cash flows, revenues, analyst compensation, and credit rating actions of the nationally recognized statistical rating organization for the period presented; and

(2) Attach to the report filed pursuant to paragraph (a)(7) of this section a signed statement by the chief executive officer of the nationally recognized statistical rating organization or, if the nationally recognized statistical rating organization does not have a chief executive officer, an individual performing similar functions, stating that the chief executive officer or individual has responsibility for the report and, to the best knowledge of the chief executive officer or other individual, the report fairly presents, in all material respects, a description of the responsibility of management in establishing and maintaining an effective internal control structure and an assessment of the effectiveness of the internal control structure.

* * * * *

(d) Electronic Filing. The reports must be filed with or furnished to, as applicable, the Commission electronically in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T.

(e) Confidential Treatment. Information in a report filed or furnished, as applicable, on a confidential basis and for which confidential treatment has been requested pursuant to applicable Commission rules will be accorded confidential treatment to the extent permitted by law. Confidential treatment may be requested by marking each page "Confidential Treatment Requested" and by complying with Commission rules governing confidential treatment.

10. Section 240.17g–5 is amended by:

a. In paragraph (a)(3) introductory text, removing the words "or mortgaged-backed";

b. In paragraphs (a)(3)(i), (a)(3)(ii) introductory text, (a)(3)(iii)(A), (a)(3)(iii)(B) introductory text, (a)(3)(iii)(C), and (a)(3)(iii)(D), removing the words "Web site" and adding in their place the word "Web site";

c. In paragraph (b)(9), removing the words "or mortgaged-backed";

d. In paragraph (c)(6), removing the word "or" at the end of the paragraph after the semicolon;

e. In paragraph (c)(7), removing the period and adding "; or" at the end of the paragraph;

f. Adding paragraph (c)(8);

g. In paragraph (e), removing the words "Web site" and adding in their place the word "website" and removing the words "Web sites" and adding in their place the word "websites" wherever it occurs; and

h. Adding paragraphs (f) and (g).

The additions read as follows:

§ 240.17g–5 Conflicts of interest.

* * * * *

(c) * * *

(8) The nationally recognized statistical rating organization issues or maintains a credit rating where a person within the nationally recognized statistical rating organization who participates in sales or marketing of a product or service of the nationally recognized statistical rating organization or a product or service of a person associated with the nationally recognized statistical rating organization also participates in determining or monitoring the credit rating, or developing or approving procedures or methodologies used for determining the credit rating, including qualitative or quantitative models.

* * * * *

(f) Upon written application by a nationally recognized statistical rating organization, the Commission may exempt, either conditionally or unconditionally or on specified terms and conditions, such nationally recognized statistical rating organization from the provisions of paragraph (c)(8) of this section if the Commission finds that due to the small size of the nationally recognized statistical rating organization it is not appropriate to require the separation within the nationally recognized statistical rating organization of the production of credit ratings from sales and marketing activities and such exemption is in the public interest.

(g) In a proceeding pursuant to Section 15E(d) of the Act (15 U.S.C. 78o–7(d)) or Section 21C of the Act (15 U.S.C. 78u–3), the Commission shall suspend or revoke the registration of a nationally recognized statistical rating organization if the Commission finds in such proceeding that the nationally recognized statistical rating organization has violated a rule issued under Section 15E(h) of the Act (15 U.S.C. 78o–7(h)), that the violation affected a rating, and that suspension or revocation is necessary for the protection of investors and in the public interest.

§ 240.17g–6 [Amended]

11. Section 240.17g–6 is amended in paragraph (a)(4) by removing the words "or mortgage-backed".

12. Section 240.17g–7 is revised to read as follows:

§ 240.17g–7 Disclosure requirements.

(a) *Disclosures to be made when taking a rating action.* A nationally recognized statistical rating organization must publish the items described in paragraphs (a)(1) and (2) of this section, as applicable, when taking a rating action with respect to a credit rating assigned to an obligor, security, or money market instrument in a class of credit ratings for which the nationally recognized statistical rating organization is registered. For purposes of this section, the term "rating action" means any of the following: the publication of an expected or preliminary credit rating assigned to an obligor, security, or money market instrument before the publication of an initial credit rating; an initial credit rating; an upgrade or downgrade of an existing credit rating (including a downgrade to, or assignment of, default); a placement of an existing credit rating on credit watch or review; an affirmation of an existing credit rating; and a withdrawal of an existing credit rating. The items described in paragraphs (a)(1) and (a)(2) of this section must be published in the same medium and made available to the same persons who can receive or access the credit rating that is the result of the rating action or that is the subject of the rating action.

(1) *Information disclosure form.* A form generated by the nationally recognized statistical rating organization that meets the requirements of paragraphs (a)(1)(i), (ii), and (iii) of this section.

(i) *Format.* The form generated by the nationally recognized statistical rating organization must be in a format that:

(A) Is easy to use and helpful for users of credit ratings to understand the information contained in the form; and

(B) Provides the content described in paragraphs (a)(1)(ii)(K), (L), and (M) of this section in a manner that is directly comparable across types of obligors, securities, and money market instruments.

(ii) *Content.* The form generated by the nationally recognized statistical rating organization must contain the following information about the credit rating:

(A) The symbol, number, or score in the rating scale used by the nationally recognized statistical rating organization to denote credit rating categories and notches within categories assigned to the obligor, security, or money market instrument that is the subject of the credit rating and the identity of the obligor, security, or money market instrument;

(B) The version of the procedure or methodology used to determine the credit rating;

(C) The main assumptions and principles used in constructing the procedures and methodologies used to determine the credit rating, including qualitative methodologies and quantitative inputs and, if the credit rating is for a structured finance product, assumptions about the correlation of defaults across the underlying assets;

(D) The potential limitations of the credit rating, including the types of risks excluded from the credit rating that the nationally recognized statistical rating organization does not comment on, including, as applicable, liquidity, market, and other risks;

(E) Information on the uncertainty of the credit rating, including:

(*1*) Information on the reliability, accuracy, and quality of the data relied on in determining the credit rating; and

(*2*) A statement relating to the extent to which data essential to the determination of the credit rating were reliable or limited, including:

(*i*) Any limits on the scope of historical data; and

(*ii*) Any limits on accessibility to certain documents or other types of information that would have better informed the credit rating;

(F) Whether and to what extent third-party due diligence services were used by the nationally recognized statistical rating organization, a description of the information that such third party reviewed in conducting due diligence services, and a description of the findings or conclusions of such third party;

(G) If applicable, how servicer or remittance reports were used, and with what frequency, to conduct surveillance of the credit rating;

(H) A description of the data about any obligor, issuer, security, or money market instrument that were relied upon

for the purpose of determining the credit rating;

(I) A statement containing an overall assessment of the quality of information available and considered in determining the credit rating for the obligor, security, or money market instrument, in relation to the quality of information available to the nationally recognized statistical rating organization in rating similar obligors, securities, or money market instruments;

(J) Information relating to conflicts of interest of the nationally recognized statistical rating organization, which must include:

(*1*) A classification of the credit rating as either:

(*i*) "Solicited sell-side," meaning the credit rating was paid for by the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated;

(*ii*) "Solicited buy-side," meaning the credit rating was paid for by a person other than the obligor being rated or the issuer, underwriter, depositor, or sponsor of the security or money market instrument being rated; or

(*iii*) "Unsolicited," meaning the nationally recognized statistical rating organization was not paid to determine the credit rating;

(*2*) If the credit rating is classified as either "solicited sell-side" or "solicited buy-side" under paragraph (a)(1)(ii)(J)(*1*) of this section, disclosure of whether the nationally recognized statistical rating organization provided services other than determining credit ratings to the person that paid for the rating during the most recently ended fiscal year; and

(*3*) If the rating action results from a review conducted pursuant to Section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) and § 240.17g–8(c) of this chapter, provide the following information (as applicable):

(*i*) If the rating action is a placement of the credit rating on credit watch pursuant to § 240.17g–8(c)(1) of this chapter, an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest and the date and associated credit rating of each prior rating action that the nationally recognized statistical rating organization currently has determined was influenced by the conflict;

(*ii*) If the rating action is a revision of the credit rating pursuant to § 240.17g–8(c)(3)(i) of this chapter, an explanation that the reason for the action is the discovery that a credit rating assigned to the obligor, security, or money market instrument in one or more prior rating actions was influenced by a conflict of interest, the date and associated credit rating of each prior rating action the nationally recognized statistical rating organization has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action;

(*iii*) If the rating action is an affirmation of the credit rating pursuant to § 240.17g–8(c)(3)(ii) of this chapter, an explanation of why no rating action was taken to revise the credit rating notwithstanding the conflict, the date and associated credit rating of each prior rating action the nationally recognized statistical rating organization has determined was influenced by the conflict, and an estimate of the impact the conflict had on each such prior rating action.

(K) An explanation or measure of the potential volatility of the credit rating, including:

(*1*) Any factors that might lead to a change in the credit rating; and

(*2*) The magnitude of the change that could occur under different market conditions;

(L) Information on the content of the credit rating, including:

(*1*) If applicable, the historical performance of the credit rating; and

(*2*) The expected probability of default and the expected loss in the event of default;

(M) Information on the sensitivity of the credit rating to assumptions made by the nationally recognized statistical rating organization, including:

(*1*) Five assumptions made in the ratings process that, without accounting for any other factor, would have the greatest impact on a rating if the assumptions were proven false or inaccurate; and

(*2*) An analysis, using specific examples, of how each of the five assumptions identified in paragraph (a)(1)(ii)(M)(*1*) of this section impacts a rating;

(N) If the credit rating is issued with respect to an asset-backed security, as defined in Section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)), a description of:

(*1*) The representations, warranties, and enforcement mechanisms available to investors; and

(*2*) How they differ from the representations, warranties, and enforcement mechanisms in issuances of similar securities.

(iii) *Attestation.* The nationally recognized statistical rating organization must attach to the form a signed statement by a person within the nationally recognized statistical rating organization stating that the person has responsibility for the rating action and, to the best knowledge of the person:

(A) No part of the credit rating was influenced by any other business activities;

(B) The credit rating was based solely upon the merits of the obligor, security, or money market instrument being rated; and

(C) The credit rating was an independent evaluation of the risks and merits of the obligor, security, or money market instrument.

(2) *Third-party due diligence certification.* Any written certification related to the credit rating received by the nationally recognized statistical rating organization from a provider of third-party due diligence services pursuant to Section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)).

(b) *Disclosure of credit rating histories.* (1) *Credit ratings subject to the disclosure requirement.* A nationally recognized statistical rating organization must publicly disclose for free on an easily accessible portion of its corporate Internet Web site:

(i) Each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the nationally recognized statistical rating organization is registered that was outstanding as of June 26, 2007, and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on credit watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument; and

(ii) Each credit rating assigned to an obligor, security, and money market instrument in every class of credit ratings for which the nationally recognized statistical rating organization is registered that was initially determined on or after June 26, 2007 and any subsequent upgrades or downgrades of a credit rating assigned to the obligor, security, or money market instrument (including a downgrade to, or assignment of, default), any placements of a credit rating assigned to the obligor, security, or money market instrument on credit watch or review, any affirmation of a credit rating assigned to the obligor, security, or money market instrument, and a withdrawal of a credit rating assigned to the obligor, security, or money market instrument.

(2) *Information.* A nationally recognized statistical rating organization must include, at a minimum, the following information with each credit rating disclosed pursuant to paragraph (b)(1) of this section:

(i) The identity of the nationally recognized statistical rating organization disclosing the rating action;

(ii) The date of the rating action;

(iii) If the rating action is taken with respect to a credit rating of an obligor as an entity, the following identifying information about the obligor, as applicable:

(A) The Central Index Key (CIK) number of the rated obligor; and

(B) The legal name of the obligor.

(iv) If the rating action is taken with respect to a credit rating of a security or money market instrument, as applicable:

(A) The Central Index Key (CIK) number of the issuer of the security or money market instrument;

(B) The legal name of the issuer of the security or money market instrument; and

(C) The CUSIP of the security or money market instrument;

(v) A classification of the rating action as either:

(A) A disclosure of a credit rating that was outstanding as of June 26, 2007, for the purposes of paragraph (b)(1)(i) of this section;

(B) An initial credit rating;

(C) An upgrade of an existing credit rating;

(D) A downgrade of an existing credit rating, which would include classifying the obligor, security, or money market instrument as in default, if applicable;

(E) A placement of an existing credit rating on credit watch or review;

(F) An affirmation of an existing credit rating; or

(G) A withdrawal of an existing credit rating and, if the classification is withdrawal, the nationally recognized statistical rating organization also must classify the reason for the withdrawal as either:

(*1*) The obligor defaulted, or the security or money market instrument went into default;

(*2*) The obligation subject to the credit rating was extinguished by payment in full of all outstanding principal and interest due on the obligation according to the terms of the obligation; or

(*3*) The credit rating was withdrawn for reasons other than those set forth in paragraph (b)(2)(v)(G)(*1*) or (*2*) of this section; and

(vi) The classification of the class or subclass that applies to the credit rating as either:

(A) Financial institutions, brokers, or dealers;

(B) Insurance companies;

(C) Corporate issuers; or

(D) Issuers of structured finance products in one of the following subclasses:

(*1*) Residential mortgage backed securities ("RMBS") (for purposes of this subclass, RMBS means a securitization primarily of residential mortgages);

(*2*) Commercial mortgage backed securities ("CMBS") (for purposes of this subclass, CMBS means a securitization primarily of commercial mortgages);

(*3*) Collateralized loan obligations ("CLOs") (for purposes of this subclass, a CLO means a securitization primarily of commercial loans);

(*4*) Collateralized debt obligations ("CDOs) (for purposes of this subclass, a CDO means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds);

(*5*) Asset-backed commercial paper conduits ("ABCP") (for purposes of this subclass, ABCP means short term notes issued by a structure that securitizes a variety of financial assets, such as trade receivables or credit card receivables, which secure the notes);

(*6*) Other asset-backed securities ("other ABS") (for purposes of this subclass, other ABS means a securitization primarily of auto loans, auto leases, floor plans, credit card receivables, student loans, consumer loans, or equipment leases); or

(*7*) Other structured finance products ("other SFPs") (for purposes of this subclass, other SFPs means any structured finance product not identified in paragraphs (b)(2)(iv)(D)(1) through (6)) of this section; or

(E) Issuers of government securities, municipal securities, or securities issued by a foreign government in one of the following subclasses:

(*1*) Sovereign issuers;

(*2*) United States public finance; or

(*3*) International public finance; and

(vii) The credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as a result of the rating action or, if the credit rating remained unchanged as a result of the rating action, the credit rating symbol, number, or score in the applicable rating scale of the nationally recognized statistical rating organization assigned to the obligor, security, or money market instrument as of the date of the rating action (in either case, include a credit rating in a default category, if applicable).

(3) *Format.* The information identified in paragraph (b)(2) of this section must be disclosed in an interactive data file that uses an XBRL (eXtensible Business Reporting Language) format and the List of XBRL Tags for NRSROs as published on the Internet Web site of the Commission.

(4) *Timing.* The nationally recognized statistical rating organization must disclose the information required in paragraph (b)(2) of this section:

(i) Within twelve months from the date the rating action is taken, if the credit rating subject to the action was paid for by the obligor being rated or by the issuer, underwriter, depositor, or sponsor of the security being rated; or

(ii) Within twenty-four months from the date the rating action is taken, if the credit rating subject to the action is not a credit rating described in paragraph (b)(4)(i) of this section.

(5) *Removal of a credit rating history.* The nationally recognized statistical rating organization may cease disclosing a rating history of an obligor, security, or money market instrument no earlier than 20 years after the date a rating action with respect to the obligor, security, or money market instrument is classified as a withdrawal of the credit rating pursuant to paragraph (b)(2)(v)(G) of this section, provided that no subsequent credit ratings are assigned to the obligor, security, or money market instrument after the withdrawal classification.

13. Section 240.17g–8 is added to read as follows:

§ 240.17g–8 Policies and procedures.

(a) *Policies and procedures with respect to the procedures and methodologies used to determine credit ratings.* A nationally recognized statistical rating organization must establish, maintain, enforce, and document policies and procedures reasonably designed to ensure:

(1) That the procedures and methodologies, including qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are approved by its board of directors or a body performing a function similar to that of a board of directors.

(2) That the procedures and methodologies, including qualitative and quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are developed and modified in accordance with the policies and procedures of the nationally recognized statistical rating organization.

(3) That material changes to the procedures and methodologies, including changes to qualitative and

quantitative data and models, the nationally recognized statistical rating organization uses to determine credit ratings are:

(i) Applied consistently to all credit ratings to which the changed procedures or methodologies apply; and

(ii) To the extent that the changes are to surveillance or monitoring procedures and methodologies, applied to then-current credit ratings within a reasonable period of time, taking into consideration the number of ratings impacted, the complexity of the procedures and methodologies used to determine the credit ratings, and the type of obligor, security, or money market instrument being rated.

(4) That the nationally recognized statistical rating organization promptly publishes on an easily accessible portion of its corporate Internet Web site:

(i) Material changes to the procedures and methodologies, including to qualitative models or quantitative inputs, the nationally recognized statistical rating organization uses to determine credit ratings, the reason for the changes, and the likelihood the changes will result in changes to any current ratings; and

(ii) Significant errors identified in a procedure or methodology, including a qualitative or quantitative model, the nationally recognized statistical rating organization uses to determine credit ratings that may result in a change in current credit ratings.

(5) That the nationally recognized statistical rating organization discloses the version of a credit rating procedure or methodology, including the qualitative methodology or quantitative inputs, used with respect to a particular credit rating.

(b) *Policies and procedures with respect to credit rating symbols, numbers, or scores.* A nationally recognized statistical rating organization must establish, maintain, enforce, and document policies and procedures that are reasonably designed to:

(1) Assess the probability that an issuer of a security or money market instrument will default, fail to make timely payments, or otherwise not make payments to investors in accordance with the terms of the security or money market instrument.

(2) Clearly define each symbol, number, or score in the rating scale used by the nationally recognized statistical rating organization to denote a credit rating category and notches within a category for each class and subclass of credit ratings for which the nationally recognized statistical rating organization is registered and to include such definitions in Exhibit 1 to Form NRSRO (§ 240b.300 of this chapter).

(3) Apply any symbol, number, or score defined pursuant to paragraph (b)(2) of this section in a manner that is consistent for all types of obligors, securities, and money market instruments for which the symbol, number, or score is used.

(c) *Policies and procedures with respect to look-back reviews.* The policies and procedures a nationally recognized statistical rating organization is required to establish, maintain, and enforce pursuant to Section 15E(h)(4)(A) of the Act (15 U.S.C. 78o–7(h)(4)(A)) must address instances in which a review conducted pursuant to those policies and procedures determines that a conflict of interest influenced a credit rating assigned to an obligor, security, or money market instrument by including, at a minimum, procedures that are reasonably designed to ensure that the nationally recognized statistical rating organization will:

(1) Immediately publish a rating action placing the applicable credit ratings of the obligor, security, or money market instrument on credit watch or review based on the discovery of the conflict and include with the publication of the rating action the information required by § 240.17g–7(a)(1)(ii)(J)(*3*)(*i*) of this chapter;

(2) Promptly determine whether the current credit rating assigned to the obligor, security, or money market instrument must be revised so that it no longer is influenced by a conflict of interest and is solely a product of the documented procedures and methodologies the nationally recognized statistical rating organization uses to determine credit ratings; and

(3) Promptly publish, based on the determination of whether the current credit rating assigned to the obligor, security, or money market instrument must be revised (as applicable):

(i) A revised credit rating, if appropriate, and include with the publication of the revised credit rating the information required by § 240.17g–7(a)(1)(ii)(J)(*3*)(*ii*) of this chapter; or

(ii) An affirmation of the credit rating, if appropriate, and include with the publication of the affirmation the information required by § 240.17g–7(a)(1)(ii)(J)(*3*)(*iii*) of this chapter.

14. Section 240.17g–9 is added to read as follows:

§ 240.17g–9 Standards of training, experience, and competence for credit analysts.

(a) A nationally recognized statistical rating organization must establish, maintain, enforce, and document standards of training, experience, and competence for the individuals it employs to determine credit ratings that are reasonably designed to achieve the objective that such individuals produce accurate credit ratings in the classes and subclasses of credit ratings for which the nationally recognized statistical rating organization is registered.

(b) The nationally recognized statistical rating organization must consider the following when establishing the standards required under paragraph (a) of this section:

(1) If the credit rating procedures and methodologies used by the individual involve qualitative analysis, the knowledge necessary to effectively evaluate and process the data relevant to the creditworthiness of the obligor being rated or the issuer of the securities or money market instruments being rated;

(2) If the credit rating procedures and methodologies used by the individual involve quantitative analysis, the technical expertise necessary to understand any models and model inputs that are a part of the procedures and methodologies;

(3) The classes and subclasses of credit ratings for which the individual participates in determining credit ratings and the factors relevant to such classes and subclasses, including the geographic location, sector, industry, regulatory and legal framework, and underlying assets, applicable to the obligors or issuers in the classes and subclasses; and

(4) The complexity of the obligors, securities, or money market instruments being rated by the individual.

(c) The nationally recognized statistical rating organization must include the following in the standards required under paragraph (a) of this section:

(1) A requirement for periodic testing of the individuals employed by the nationally recognized statistical rating organization to determine credit ratings on their knowledge of the procedures and methodologies used by the nationally recognized statistical rating organization to determine credit ratings in the classes and subclasses of credit ratings for which the individual participates in determining credit ratings; and

(2) A requirement that at least one individual with three years or more experience in performing credit analysis participates in the determination of a credit rating.

15. Section 240.17g–10 is added to read as follows:

§ 240.17g–10 Certification of providers of third-party due diligence services in connection with asset-backed securities.

(a) The written certification that a person employed to provide third-party due diligence services is required to provide to a nationally recognized statistical rating organization pursuant to Section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)) must be on Form ABS Due Diligence–15E (§ 240b.400 of this chapter).

(b) The written certification must be signed by an individual who is duly authorized by the person providing the third-party due diligence services to make such a certification.

(c) For the purposes of Section 15E(s)(4)(B) of the Act (15 U.S.C. 78o–7(s)(4)(B)) and this section:

(1) The term *due diligence services* means a review of the assets underlying an asset-backed security, as defined in Section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) for the purpose of making findings with respect to:

(i) The quality or integrity of the information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets;

(ii) Whether the origination of the assets conformed to, or deviated from, stated underwriting or credit extension guidelines, standards, criteria, or other requirements;

(iii) The value of collateral securing such assets;

(iv) Whether the originator of the assets complied with Federal, state, or local laws or regulations; or

(v) Any other factor or characteristic of such assets that would be material to the likelihood that the issuer of the asset-backed security will pay interest and principal according to its terms and conditions.

(2) The term *issuer* includes a sponsor, as defined in § 229.1011 of this chapter, or depositor, as defined in § 229.1011 of this chapter, that participates in the issuance of an asset-backed security, as defined in Section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)).

(3) The term *originator* has the same meaning as in Section 15G of the Act (15 U.S.C. 78o–9).

(4) The term *securitizer* has the same meaning as in Section 15G of the Act (15 U.S.C. 78o–9).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

Subpart O—Forms for Securitizers of Asset-Backed Securities

17. Section 249.1400 and Form ABS–15G (referenced in § 249.1400) to Part 249 are revised to read as follows:

§ 249.1400 Form ABS–15G, Asset-backed securitizer report pursuant to Section 15G of the Securities Exchange Act of 1934.

This form shall be used for reports of information required by Rule 15Ga–1 (§ 240.15Ga–1 of this chapter) and Rule 15Ga–2 (§ 240.15Ga–2 of this chapter).

Note: The text of Form ABS–15G does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM ABS–15G

ASSET–BACKED SECURITIZER REPORT PURSUANT TO SECTION 15G OF THE SECURITIES EXCHANGE ACT OF 1934

Check the appropriate box to indicate the filing obligation which this form is intended to satisfy:

__ Rule 15Ga–1 under the Exchange Act (17 CFR 240.15Ga–1) for the reporting period _____ to _____

__ Rule 15Ga–2 under the Exchange Act (17 CFR 240.15Ga–2)

Date of Report (Date of earliest event reported)_____

Commission File Number of securitizer: _____

Central Index Key Number of securitizer: _____

_____

Name and telephone number, including area code, of the person to contact in connection with this filing

Indicate by check mark whether the securitizer has no activity to report for the initial period pursuant to Rule 15Ga–1(c)(1) [ ]

Indicate by check mark whether the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga–1(c)(2)(i) [ ]

Indicate by check mark whether the securitizer has no activity to report for the annual period pursuant to Rule 15Ga–1(c)(2)(ii) [ ]

____ For forms furnished pursuant to Rule 15Ga–2 under the Exchange Act (17 CFR 240.15Ga–2), also provide the following information:

Commission File Number of depositor: _____

Central Index Key Number of depositor: _____

_____

(Exact name of issuing entity as specified in its charter)

Central Index Key Number of issuing entity (if applicable): _____

Commission File Number of issuing entity (if applicable): _____

Commission File Number of underwriter (if applicable): _____

Central Index Key Number of underwriter (if applicable): _____

GENERAL INSTRUCTIONS

A. Rule as to Use of Form ABS–15G.

This form shall be used to comply with the requirements of Rule 15Ga–1 (17 CFR 240.15Ga–1) and Rule 15Ga–2 (17 CFR 240.15Ga–2) under the Exchange Act.

B. Events to be Reported and Time for Filing of Reports.

Forms filed under Rule 15Ga–1. In accordance with Rule 15Ga–1, file the information required by Part I in accordance with Item 1.01, Item 1.02, or Item 1.03, as applicable. If the filing deadline for the information occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the filing deadline shall be the first business day thereafter.

Forms filed under Rule 15Ga–2. In accordance with Rule 15Ga–2, furnish the information required by Part II no later than five business days prior to the first sale of securities in the offering.

C. Preparation of Report

This form is not to be used as a blank form to be filled in, but only as a guide in the preparation of the report on paper meeting the requirements of Rule 12b–12 (17 CFR 240.12b–12). The report shall contain the number and caption of the applicable item, but the text of such item may be omitted, provided the answers thereto are prepared in the manner specified in Rule 12b–13 (17 CFR 240.12b–13). All items that are not required to be answered in a particular report may be omitted and no reference thereto need be made in the report. All instructions should also be omitted.

D. Signature and Filing of Report

1. *Forms filed under Rule 15Ga–1.* Any form filed for the purpose of meeting the requirements in Rule 15Ga–1 must be signed by the senior officer in charge of securitization of the securitizer.

2. *Forms filed under Rule 15Ga–2.* Any form filed for the purpose of meeting the requirements in Rule 15Ga–2 must be signed by the senior officer in charge of securitization of the depositor if information required by Item 2.01 is required to be provided and must be signed by a duly authorized officer of

the underwriter if information required by Item 2.02 is required to be provided.

3. *Copies of report.* If paper filing is permitted, three complete copies of the report shall be filed with the Commission.

INFORMATION TO BE INCLUDED IN THE REPORT

PART I: REPRESENTATION AND WARRANTY INFORMATION

Item 1.01 Initial Filing of Rule 15Ga–1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) according to the filing requirements of Rule 15Ga–1(c)(1).

Item 1.02 Periodic Filing of Rule 15Ga–1 Representations and Warranties Disclosure

Provide the disclosures required by Rule 15Ga–1 (17 CFR 240.15Ga–1) according to the filing requirements of Rule 15Ga–1(c)(2).

Item 1.03 Notice of Termination of Duty to File Reports under Rule 15Ga–1

If a securitizer terminates its reporting obligation pursuant to Rule 15Ga–1(c)(3), provide the date of the last payment on the last asset-backed security outstanding that was issued by or issued by an affiliate of the securitizer.

PART II: FINDINGS AND CONCLUSIONS OF THIRD–PARTY DUE DILIGENCE REPORTS

Item 2.01 Findings and Conclusions of a Third Party Due Diligence Report Obtained by the Issuer

Provide the disclosures required by Rule 15Ga–2 (17 CFR 240.15Ga–2) for any third-party due diligence report obtained by the issuer.

Item 2.02 Findings and Conclusions of a Third-Party Due Diligence Report Obtained by the Underwriter

Provide the disclosures required by Rule 15Ga–2 (17 CFR 240.15Ga–2) for any third party engaged by the underwriter.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the reporting entity has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____ (Securitizer or Underwriter)

Date _____

_____(Signature)*

*Print name and title of the signing officer under his signature.

PART 249b—FURTHER FORMS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for part 249b continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.,* unless otherwise noted;

* * * * *

Note: The text of Form NRSRO does not, and this amendment will not, appear in the Code of Federal Regulations.

19. Form NRSRO (referenced in § 249b.300) is revised to read as follows:

Form NRSRO

APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1541 (4–09)

BILLING CODE 8011–01–P

APPLICATION FOR REGISTRATION AS A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION (NRSRO)

☐ INITIAL APPLICATION

☐ APPLICATION TO ADD CLASS OF CREDIT RATINGS

☐ APPLICATION SUPPLEMENT
Items and/or Exhibits Supplemented:

_____

☐ ANNUAL CERTIFICATION

☐ UPDATE OF REGISTRATION
Items and/or Exhibits Amended:

_____

☐ WITHDRAWAL FROM REGISTRATION

Important: Refer to Form NRSRO Instructions for General Instructions, Item-by-Item Instructions, an Explanation of Terms, and the Disclosure Reporting Page (NRSRO). "You" and "your" mean the person filing or furnishing, as applicable, this Form NRSRO and any credit rating affiliate identified in Item 3.

1. A. Your full name:

_____

B. (i) Name under which your credit rating business is primarily conducted, if different from Item 1A:

_____

(ii) Any other name under which your credit rating business is conducted and where it is used (other than the name of a credit rating affiliate identified in Item 3):

_____

C. Address of your principal office (do not use a P.O. Box):

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

D. Mailing address, if different:

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

E. Contact person (See Instructions):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Zip/Postal Code)

CERTIFICATION:

The undersigned has executed this Form NRSRO on behalf of, and on the authority of, the Applicant/NRSRO. The undersigned, on behalf of the Applicant/NRSRO, represents that the information and statements contained in this Form, including Exhibits and attachments, all of which are part of this Form, are accurate in all significant respects. If

this is an ANNUAL CERTIFICATION, the undersigned, on behalf of the NRSRO, represents that the NRSRO's application on Form NRSRO, as amended, is accurate in all significant respects.

_____ _____
(Date) (Name of the Applicant/NRSRO)

By:

_____
(Signature) (Print Name and Title)

2. **A**. Your legal status:

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Other (specify) _____

B. Month and day of your fiscal year end: _____

C. Place and date of your formation (i.e., state or country where you were incorporated, where your partnership agreement was filed, or where you otherwise were formed):

State/Country of formation: _____ Date of formation: _____

3. Your credit rating affiliates (See Instructions):

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

_____
(Name) (Address)

4. The designated compliance officer of the Applicant/NRSRO (See Instructions):

_____
(Name and Title)

_____
(Number and Street) (City) (State/Country) (Postal Code)

5. Describe in detail how this Form NRSRO and Exhibits 1 through 9 to this Form NRSRO will be made publicly and freely available on an easily accessible portion of the corporate Internet website of the Applicant/NRSRO (See Instructions):

_____

_____

_____

6. COMPLETE ITEM 6 ONLY IF THIS IS AN INITIAL APPLICATION, APPLICATION SUPPLEMENT, OR APPLICATION TO ADD A CLASS OF CREDIT RATINGS.

A. Indicate below the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. For each class, indicate the approximate number of obligors, securities, and money market instruments in that class as of the date of this application for which the Applicant/NRSRO has an outstanding credit rating and the

approximate date the Applicant/NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit ratings	Applying for registration	Approximate number currently outstanding	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		
issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		
issuers of government securities as that term is defined in section 3(a)(42) of the Exchange Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

_____

C. Check the applicable box and attach certifications from qualified institutional buyers, if required (See Instructions):

☐ The Applicant/NRSRO is attaching _____ certifications from qualified institutional buyers to this application. Each is marked "Certification from Qualified Institutional Buyer."

☐ The Applicant/NRSRO is exempt from the requirement to file certifications from qualified institutional buyers pursuant to section 15E(a)(1)(D) of the Exchange Act.

Note: You are not required to make a Certification from a Qualified Institutional Buyer filed with this Form NRSRO publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep these certifications confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the certifications confidential upon request to the extent permitted by law.

7. DO NOT COMPLETE ITEM 7 IF THIS IS AN INITIAL APPLICATION.

A. Indicate below the classes of credit ratings for which the NRSRO is currently registered. For each class, indicate the approximate number of obligors, securities, and money market instruments in that class for which the NRSRO had an outstanding credit rating as of the most recent calendar year end and the approximate date the NRSRO began issuing credit ratings as a "credit rating agency" in that class on a continuous basis through the present (See Instructions):

Class of credit rating	Currently registered	Approximate number outstanding as of the most recent calendar year end	Approximate date issuance commenced
financial institutions as that term is defined in section 3(a)(46) of the Exchange Act (15 U.S.C. 78c(a)(46)), brokers as that term is defined in section 3(a)(4) of the Exchange Act (15 U.S.C. 78c(a)(4)), and dealers as that term is defined in section 3(a)(5) of the Exchange Act (15 U.S.C. 78c(a)(5))	☐		
insurance companies as that term is defined in section 3(a)(19) of the Exchange Act (15 U.S.C. 78c(a)(19))	☐		
corporate issuers	☐		
issuers of asset-backed securities as that term is defined in 17 CFR 229.1101(c)	☐		
issuers of government securities as that term is defined in section 3(a)(42) of the Act (15 U.S.C. 78c(a)(42)), municipal securities as that term is defined in section 3(a)(29) of the Exchange Act (15 U.S.C. 78c(a)(29)), and foreign government securities	☐		

B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee (See Instructions):

_____

_____

_____

8. Answer each question. Provide information that relates to a "Yes" answer on a Disclosure Reporting Page (NRSRO) and submit the Disclosure Reporting Page with this Form NRSRO (See Instructions). You are not required to make any disclosure reporting pages submitted with this Form publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.	
	YES NO

A. Has the Applicant/NRSRO or any person within the Applicant/NRSRO committed or omitted any act, or been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934 in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
B. Has the Applicant/NRSRO or any person within the Applicant/NRSRO been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction in the ten years preceding the date of the initial application of the Applicant/NRSRO for registration as an NRSRO or at any time thereafter?	☐	☐
C. Is any person within the Applicant/NRSRO subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO?	☐	☐

9. Exhibits (See Instructions).

Exhibit 1. Credit ratings performance measurement statistics. ☐ Exhibit 1 is attached and made a part of this Form NRSRO.
Exhibit 2. A description of the procedures and methodologies used in determining credit ratings. ☐ Exhibit 2 is attached and made a part of Form NRSRO.
Exhibit 3. Policies or procedures adopted and implemented to prevent the misuse of material, nonpublic information. ☐ Exhibit 3 is attached and made a part of this Form NRSRO.
Exhibit 4. Organizational structure. ☐ Exhibit 4 is attached to and made a part of this Form NRSRO.
Exhibit 5. The code of ethics or a statement of the reasons why a code of ethics is not in effect. ☐ Exhibit 5 is attached to and made a part of this Form NRSRO.
Exhibit 6. Identification of conflicts of interests relating to the issuance of credit ratings. ☐ Exhibit 6 is attached to and made a part of this Form NRSRO.
Exhibit 7. Policies and procedures to address and manage conflicts of interest. ☐ Exhibit 7 is attached to and made a part of this Form NRSRO.
Exhibit 8. Certain information regarding the credit rating agency's credit analysts and credit analyst supervisors. ☐ Exhibit 8 is attached to and made a part of this Form NRSRO.

Exhibit 9. Certain information regarding the credit rating agency's designated compliance officer.

☐ Exhibit 9 is attached to and made a part of this Form NRSRO.

Exhibit 10. A list of the largest users of credit rating services by the amount of net revenue earned from the user during the fiscal year ending immediately before the date of the initial application.

☐ Exhibit 10 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 11. Audited financial statements for each of the three fiscal or calendar years ending immediately before the date of the initial application.

☐ Exhibit 11 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 12. Information regarding revenues for the fiscal or calendar year ending immediately before the date of the initial application.

☐ Exhibit 12 is attached to and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

Exhibit 13. The total and median annual compensation of credit analysts.

☐ Exhibit 13 is attached and made a part of this Form NRSRO.

Note: You are not required to make this Exhibit publicly available on your corporate Internet website pursuant to Exchange Act Rule 17g-1(i). You may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law.

BILLING CODE 8011–01–C

FORM NRSRO INSTRUCTIONS

A. GENERAL INSTRUCTIONS.

1. Form NRSRO is the Application for Registration as a Nationally Recognized Statistical Rating Organization ("NRSRO") under Section 15E of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 17g–1. Exchange Act Rule 17g–1 requires an Applicant/NRSRO to use Form NRSRO to:

- File an initial application to be registered as an NRSRO with the U.S. Securities and Exchange Commission ("Commission");
- File an application to register for an additional class of credit ratings with the Commission;
- File an application supplement with the Commission;
- File an update of registration pursuant to Section 15E(b)(1) of the Exchange Act with the Commission;
- File an annual certification pursuant to Section 15E(b)(2) of the Exchange Act with the Commission; and
- Furnish a withdrawal of registration pursuant to Section 15E(e) of the Exchange Act to the Commission.

2. Exchange Act Rule 17g–1(c) requires that an Applicant/NRSRO

promptly file with the Commission a written notice if information filed with the Commission in an initial application for registration or in an application to register for an additional class of credit ratings is found to be or becomes materially inaccurate before the Commission has granted or denied the application. The notice must identify the information found to be materially inaccurate. The Applicant/NRSRO must also promptly file with the Commission accurate and complete information as an application supplement on Form NRSRO.

3. Pursuant to Exchange Act Rule 17g–1(i), an NRSRO must make its current Form NRSRO and information and documents filed in Exhibits 1 through 9 to Form NRSRO publicly and freely available on an easily accessible portion of its corporate Internet website within 10 business days after the date of the Commission Order granting an initial application for registration as an NRSRO or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission an update of registration, annual certification, or withdrawal from registration on Form NRSRO. The certifications from qualified institutional buyers, disclosure reporting pages, and Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Rule 17g–1(i). An Applicant/NRSRO may request that the Commission keep confidential the certifications from qualified institutional buyers, the disclosure reporting pages, and the information and documents in Exhibits 10–13 filed with the Commission. An Applicant/NRSRO seeking confidential treatment for these submissions should mark each page "Confidential Treatment" and comply with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep this information confidential to the extent permitted by law.

4. Section 15E(a)(2) of the Exchange Act prescribes time periods and requirements for the Commission to grant or deny an initial application for registration as an NRSRO. These time periods also apply to an application to register for an additional class of credit ratings.

5. Type or clearly print all information. Use only the current version of Form NRSRO or a reproduction of it.

6. Section 15E of the Exchange Act (15 U.S.C. 78o–7) authorizes the Commission to collect the Information on Form NRSRO from an Applicant/NRSRO. The principal purposes of Form NRSRO are to determine whether an Applicant should be granted registration as an NRSRO, whether an NRSRO should be granted registration in an additional class of credit ratings, whether an NRSRO continues to meet the criteria for registration as an NRSRO, for an NRSRO to withdraw from registration, and to provide information about an NRSRO to users of credit ratings. Intentional misstatements or omissions may constitute federal criminal violations under 18 U.S.C. 1001.

The information collection is in accordance with the clearance requirements of Section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The Commission may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. The time required to complete and file or furnish, as applicable, this form, will vary depending on individual circumstances. The estimated average time to complete an initial application is displayed on the facing page of this Form. Send comments regarding this burden estimate or suggestions for reducing the burden to Chief Information Officer, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549 or *PRA Mailbox@sec.gov*.

7. Under Exchange Act Rule 17g–2(b)(10), an NRSRO must retain copies of all Form NRSROs (including Exhibits, accompanying information, and documents) filed with or furnished to, as applicable, the Commission. Exchange Act Rule 17g–2(c) requires that these records be retained for three years after the date the record is made.

8. An Applicant must file with the Commission at the address indicated below two paper copies of an initial application for registration as an NRSRO under Exchange Act Rule 17g–1(a), an application to register for an additional class of credit ratings under Exchange Act Rule 17g–1(b), a supplement to an initial application or application to register for an additional class of credit ratings under Exchange Act Rule 17g–1(c), or a withdrawal of an initial application or an application to register for an additional class of credit ratings under Exchange Act Rule 17g–1(d).

ADDRESS—The mailing address for Form NRSRO is: U.S. Securities and Exchange Commission, 100 F Street, NE. Washington, DC 20549.

After registration, an NRSRO must file with or furnish to, as applicable, the Commission electronically in the format required by the EDGAR Filer Manual, as defined in Rule 11 of Regulation S–T, an update of registration under Exchange Act Rule 17g–1(e), an annual certification under Exchange Act Rule 17g–1(f), or a withdrawal from registration under Exchange Act Rule 17g–1(g).

9. A Form NRSRO will be considered filed with or furnished to, as applicable, the Commission on the date the Commission receives a complete and properly executed Form NRSRO that follows all applicable instructions for the Form, including the instructions in Item A.8 with respect to how a Form NRSRO must be filed with or furnished to the Commission.

10. An NRSRO is subject to applicable fines, penalties, and other available sanctions set forth in Sections 15E, 21, 21A, 21B, 21C, and 32 of the Exchange Act (15 U.S.C. 78o–7, 78u, 78u–1, 78u–2, 78u–3, and 78ff, respectively) for violations of the securities laws.

B. INSTRUCTIONS FOR AN INITIAL APPLICATION

An Applicant applying to be registered with the Commission as an NRSRO must file with the Commission an initial application on Form NRSRO. To complete an initial application:

- Check the "INITIAL APPLICATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 6, and 8. (See Instructions below for each Item). Enter "None" or "N/A" where appropriate.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers, marked "Certification from Qualified Institutional Buyer" (See Instructions below for Item 6C).
- Attach Exhibits 1 through 13 (See Instructions below for each Exhibit).
- Execute the Form.

The Applicant must promptly file with the Commission a written notice if information submitted to the Commission in an initial application is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly file with the Commission an application supplement on Form NRSRO (*See* instructions below for an application supplement).

C. INSTRUCTIONS FOR AN APPLICATION TO ADD A CLASS OF CREDIT RATINGS

An NRSRO applying to register for an additional class of credit ratings must file with the Commission an application on Form NRSRO. To complete an application to register for an additional class of credit ratings:

- Check the "APPLICATION TO ADD CLASS OF CREDIT RATINGS" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 6, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- Unless exempt from the requirement, attach certifications from qualified institutional buyers for the additional class of credit ratings marked "Certification from Qualified Institutional Buyer" (See Instructions below for Item 6C).
- If any information in an Exhibit previously submitted is materially inaccurate, update that information.
- Execute the Form.

The Applicant must promptly file with the Commission a written notice if information submitted to the Commission in an application to add a class of credit ratings is found to be or becomes materially inaccurate prior to the date of a Commission order granting or denying the application. The notice must identify the information found to be materially inaccurate. The Applicant also must promptly file with the Commission an application supplement on Form NRSRO (See instructions below for an application supplement).

D. INSTRUCTIONS FOR AN APPLICATION SUPPLEMENT

An Applicant must file an application supplement with the Commission on Form NRSRO if information submitted to the Commission in a pending initial application for registration as an NRSRO or a pending application to register for an additional class of credit ratings is found to be or becomes materially inaccurate. To complete an application supplement:

- Check the "APPLICATION SUPPLEMENT" box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being supplemented.
- Complete Items 1, 2, 3, 4, 5 and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If supplementing an initial application, also complete Item 6. If supplementing an application for registration in an additional class of credit ratings, also complete Items 6 and 7. If any information in an Item on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- If a certification from a qualified institutional buyer is being updated or a new certification is being added, attach the updated or new certification.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

E. INSTRUCTIONS FOR AN UPDATE OF REGISTRATION

After registration is granted, Section 15E(b)(1) of the Exchange Act requires that an NRSRO must *promptly* amend its application for registration if information or documents provided in a previously submitted Form NRSRO become *materially inaccurate.* This requirement does not apply to Item 7 and Exhibit 1, which only are required to be updated annually with the annual certification. It also does not apply to Exhibits 10–13 and the certifications from qualified institutional buyers, which are not required to be updated on Form NRSRO after registration. An NRSRO amending its application for registration must file with the Commission an update of its registration on Form NRSRO. To complete an update of registration:

- Check the "UPDATE OF REGISTRATION" box at the top of Form NRSRO.
- Indicate on the line provided under the box the Item(s) or Exhibit(s) being updated.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- If an Exhibit is being updated, attach the updated Exhibit.
- Execute the Form.

F. INSTRUCTIONS FOR ANNUAL CERTIFICATIONS

After registration is granted, Section 15E(b)(2) of the Exchange Act requires that an NRSRO file with the Commission an annual certification not later than 90 days after the end of each calendar year. The annual certification must be filed with the Commission on Form NRSRO and must include an update of the information in Item 7 and the credit rating transition and default rates submitted in Exhibit 1, a certification that the information and documents on or with Form NRSRO continue to be accurate (use the certification on the Form), and a list of material changes to the application for registration that occurred during the previous calendar year. To complete an annual certification:

- Check the "ANNUAL CERTIFICATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information in an Item on the previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- If any information in a non-confidential Exhibit previously submitted is materially inaccurate, update that information. (Note: After registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Exchange Act Rule 17g–1(i) and they should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year under Exchange Act Rule 17g–3.).
- Attach a list of all material changes made to the information or documents in the application for registration of the NRSRO that occurred during the previous calendar year.
- Execute the Form.

G. INSTRUCTIONS FOR A WITHDRAWAL FROM REGISTRATION

Section 15E(e)(1) of the Exchange Act provides that an NRSRO may voluntarily withdraw its registration with the Commission. Under Exchange Act Rule, 17g–1(g), to withdraw from registration, an NRSRO must furnish the Commission with a notice of withdrawal from registration on Form NRSRO. The withdrawal from registration will become effective 45 calendar days after the withdrawal from registration is furnished to the Commission upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of

investors. To complete a withdrawal from registration:

- Check the "WITHDRAWAL FROM REGISTRATION" box at the top of Form NRSRO.
- Complete Items 1, 2, 3, 4, 5, 7, and 8 on the Form following all applicable instructions for each Item (See Instructions below for each Item). If any information on a previously submitted Form NRSRO is materially inaccurate, update that information. Enter "None" or "N/A" where appropriate. Complete each Item even if the Item is not being updated.
- Execute the Form.

H. INSTRUCTIONS FOR SPECIFIC LINE ITEMS

Item 1A. Provide the name of the person (*e.g.,* XYZ Corporation) that is filing or furnishing, as applicable, the Form NRSRO. This means the name of the person that is applying for registration as an NRSRO or is registered as an NRSRO and not the name of the individual that is executing the Form.

Item 1E. The individual listed as the contact person must be authorized to receive all communications and papers from the Commission and must be responsible for their dissemination within the Applicant/NRSRO.

Certification. The certification must be executed by the Chief Executive Officer or the President of the person that is filing or furnishing, as applicable, the Form NRSRO or an individual with similar responsibilities.

Item 3. Identify credit rating affiliates that issue credit ratings on behalf of the person filing or furnishing, as applicable, the Form NRSRO in one or more of the classes of credit ratings identified in Item 6 or Item 7. A "credit rating affiliate" is a separate legal entity or a separately identifiable department or division thereof that determines credit ratings that are credit ratings of the person filing or furnishing, as applicable, the Form NRSRO. The information in Items 4–8 and all the Exhibits must incorporate information about the credit ratings, methodologies, procedures, policies, financial condition, results of operations, personnel, and organizational structure of each credit rating affiliate identified in Item 3, as applicable. Any credit rating determined by a credit rating affiliate identified in Item 3 will be treated as a credit rating issued by the person filing or furnishing, as applicable, the Form NRSRO for purposes of Section 15E of the Exchange Act and the Commission's rules thereunder. The terms "Applicant" and "NRSRO" as used on Form NRSRO and the Instructions for the Form mean the person filing or furnishing, as applicable, the Form NRSRO and any credit rating affiliate identified in Item 3.

Item 4. Section 15E(j)(1) of the Exchange Act requires an NRSRO to designate a compliance officer responsible for administering the policies and procedures of the NRSRO established pursuant to Sections 15E(g) and (h) of the Exchange Act (respectively, to prevent the misuse of material nonpublic information and address and manage conflicts of interest) and for ensuring compliance with applicable securities laws, rules, and regulations.

Item 5. Section 15E(a)(3) of the Exchange Act and Exchange Act Rule 17g–1(i) require an NRSRO to make Form NRSRO and Exhibits 1–9 to Form NRSRO filed with the Commission publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site within 10 business days after the date of the Commission order granting an initial application for registration as an NRSRO or an application to register for an additional class of credit ratings and within 10 business days after filing with or furnishing to, as applicable, the Commission an amendment, annual certification, or withdrawal from registration on Form NRSRO. The certifications from qualified institutional investors, Disclosure Reporting Pages, and Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's corporate Internet Web site. Describe how the current Form NRSRO and Exhibits 1–9 will be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site by providing the Internet address and link to the Form and Exhibits.

Item 6. Complete Item 6 only if filing an initial application for registration, an application to be registered in an additional class of credit ratings, or an application supplement.

Item 6A. Pursuant to Section 15E(a)(1)(B)(vii) of the Exchange Act, an Applicant applying for registration as an NRSRO must disclose in the application the classes of credit ratings for which the Applicant/NRSRO is applying to be registered. Indicate these classes by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the Applicant/NRSRO presently has a credit rating outstanding as of the date of the application. In determining this amount, the Applicant/NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. The Applicant/NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating. An Applicant/NRSRO must include in the class of credit ratings described in Section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in Section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. For each class of credit ratings, also provide in the appropriate box the approximate date the Applicant/NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a "credit rating agency," as that term is defined in Section 3(a)(61) of the Exchange Act. If there was a period when the Applicant/NRSRO stopped issuing credit ratings in a particular class or stopped operating as a credit rating agency, provide the approximate date the Applicant/NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of "credit rating agency" in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the Applicant/NRSRO began operating as a "credit rating agency."

Item 6B. To meet the definition of "credit rating agency" pursuant to Section 3(a)(61)(A) of the Exchange Act, the Applicant must, among other things, issue "credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee." Briefly describe how the Applicant/NRSRO makes the credit ratings in the classes indicated in Item 6A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the Applicant/NRSRO, provide a fee schedule or describe the price(s) charged.

Item 6C. If the Applicant/NRSRO is required to file qualified institutional buyer certifications under Section 15E(a)(1)(C) of the Exchange Act file a minimum of 10 certifications from qualified institutional buyers, none of which is affiliated with the Applicant/

NRSRO. Each certification may address more than one class of credit ratings. To be registered as an NRSRO for a class of credit ratings identified in Item 6A under "Applying for Registration," the Applicant/NRSRO must file at least two certifications that address the class of credit ratings. If this is an application of an NRSRO to be registered in one or more additional classes of credit ratings, file at least two certifications that address each additional class of credit ratings.

The required certifications must be signed by a person duly authorized by the certifying entity, must be notarized, must be marked "Certification from Qualified Institutional Buyer," and must be in substantially the following form:

"I, [Executing official], am authorized by [Certifying entity] to execute this certification on behalf of [Certifying entity]. I certify that all actions by stockholders, directors, general partners, and other bodies necessary to authorize me to execute this certification have been taken and that [Certifying entity]:

(i) Meets the definition of a 'qualified institutional buyer' as set forth in section 3(a)(64) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(64)) pursuant to the following subsection(s) of 17 CFR 230.144A(a)(1) [insert applicable citations];

(ii) Has seriously considered the credit ratings of [the Applicant/NRSRO] in the course of making some of its investment decisions for at least the three years immediately preceding the date of this certification, in the following classes of credit ratings: [Insert applicable classes of credit ratings]; and

(iii) Has not received compensation either directly or indirectly from [the Applicant/NRSRO] for executing this certification.

[*Signature*]

Print Name and Title

You are not required to make a Certification from a Qualified Institutional Buyer filed with this Form NRSRO publicly available on your corporate Internet Web site pursuant to Exchange Act Rule 17g–1(i). You may request that the Commission keep these certifications confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the certifications confidential upon request to the extent permitted by law.

Item 7. An Applicant filing Form NRSRO to apply for registration as an NRSRO should not complete Item 7. An NRSRO filing or furnishing, as applicable, Form NRSRO for any other reason must complete Item 7. The information in Item 7 must be updated on an annual basis with the filing of the annual certification.

Item 7A. Indicate the classes of credit ratings for which the NRSRO is currently registered by checking the appropriate box or boxes. For each class of credit ratings, provide in the appropriate box the approximate number of obligors, securities, and money market instruments in that class for which the NRSRO had a credit rating outstanding as of the end of the most recently ended calendar year. In determining this amount, NRSRO must treat as a separately rated security or money market instrument each individually rated security and money market instrument that, for example, is assigned a distinct CUSIP or other unique identifier, has distinct credit enhancement features as compared with other securities or money market instruments of the same issuer, or has a different maturity date as compared with other securities or money market instruments of the same issuer. The NRSRO must not include an obligor, security, or money market instrument in more than one class of credit rating. An NRSRO must include in the class of credit ratings described in Section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) to the extent not described in Section 3(a)(62)(B)(iv), any rated security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction. For each class of credit ratings, also provide in the appropriate box the approximate date the NRSRO began issuing and making readily accessible credit ratings in the class on a continuous basis through the present as a "credit rating agency," as that term is defined in Section 3(a)(61) of the Exchange Act. If there was a period when the NRSRO stopped issuing credit ratings in a particular class or stopped operating as a credit rating agency, provide the approximate date the NRSRO resumed issuing and making readily accessible credit ratings in that class as a credit rating agency. Refer to the definition of "credit rating agency" in the instructions below (also at 15 U.S.C. 78c(a)(61)) to determine when the NRSRO began operating as a "credit rating agency."

Item 7B. Briefly describe how the NRSRO makes the credit ratings in the classes indicated in Item 7A readily accessible for free or for a reasonable fee. If a person must pay a fee to obtain a credit rating made readily accessible by the NRSRO, provide a fee schedule or describe the price(s) charged.

Item 8. Answer each question by checking the appropriate box. Refer to the definition of "person within an Applicant/NRSRO" set forth below to determine the persons to which the questions apply. Information that relates to an affirmative answer must be provided on a Disclosure Reporting Page (NRSRO) and filed with Form NRSRO. Submit a separate Disclosure Reporting Page (NRSRO) for each person that: (a) has committed or omitted any act, or has been subject to an order or finding, enumerated in subparagraphs (A), (D), (E), (G), or (H) of section 15(b)(4) of the Securities Exchange Act of 1934, has been convicted of any offense specified in section 15(b)(4)(B) of the Securities Exchange Act of 1934, or has been enjoined from any action, conduct, or practice specified in section 15(b)(4)(C) of the Securities Exchange Act of 1934; (b) has been convicted of any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4) of the Securities Exchange Act of 1934, or has been convicted of a substantially equivalent crime by a foreign court of competent jurisdiction; or (c) is subject to any order of the Commission barring or suspending the right of the person to be associated with an NRSRO. The Disclosure Reporting Page (NRSRO) is attached to these instructions. Note: The definition of "person within an Applicant/NRSRO" is narrower than the definition of "person associated with a nationally recognized statistical rating organization" in Section 3(a)(63) of the Exchange Act. You are not required to make any disclosure reporting pages submitted with this Form NRSRO publicly available on your corporate Internet Web site pursuant to Exchange Act Rule 17g–1(i). You may request that the Commission keep any disclosure reporting pages confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment. The Commission will keep the disclosure reporting pages confidential upon request to the extent permitted by law.

Item 9. Exhibits. Section 15E(a)(1)(B) of the Exchange Act requires a credit rating agency's application for registration as an NRSRO to contain certain specific information and documents and, pursuant to Section 15E(a)(1)(B)(x), any other information and documents concerning the applicant and any person associated with the applicant that the Commission requires as necessary or appropriate in the public interest or for the protection of investors. If any information or

document required to be included with any Exhibit is maintained in a language other than English, file a copy of the original document and a version of the document translated into English. Attach a certification by an authorized person that the translated version is a true, accurate, and complete English translation of the information or document. Attach the Exhibits to Form NRSRO in numerical order. Bind each Exhibit separately, and mark each Exhibit or bound volume of the Exhibit with the appropriate Exhibit number. The information in the Exhibits must be sufficiently detailed to allow for verification. The information and documents in Exhibits 1 through 9 must be made publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site pursuant to Exchange Act Rule 17g–1(i). The information and documents in Exhibits 10 through 13 are not required to be made publicly available on the NRSRO's corporate Internet Web site pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep these Exhibits confidential by marking each page of them "Confidential Treatment" and complying with Commission rules governing confidential treatment (See 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in these Exhibits confidential upon request to the extent permitted by law. (Note: After registration, Exhibits 10 through 13 are not required to be made publicly available by the NRSRO pursuant to Exchange Act Rule 17g–1(i) and they should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g–3.).

Exhibit 1. (1) An Applicant/NRSRO must provide in this Exhibit performance measurement statistics consisting of transition and default rates for each class and subclass of credit ratings (listed below) for which it is seeking registration as an NRSRO or for which it is registered as an NRSRO. For each applicable class and subclass of credit ratings, an Applicant/NRSRO must provide transition and default rates for 1-, 3-, and 10-year time periods through the most recent calendar year end. The transition and default rates for each time period must be presented together in tabular form ("Transition/Default Matrix"). The Transition/Default Matrices must be presented on a calendar year basis even if the Applicant/NRSRO has a fiscal year end other than December 31. Exhibit 1 must be updated annually with the filing of the NRSRO's Annual Certification pursuant to Exchange Act Rule 17g–1(f). Pursuant to Exchange Act Rule 17g–1(i), an NRSRO must make the Annual Certification publicly and freely available on an easily accessible portion of the NRSRO's corporate Internet Web site within 10 business days after the filing and must make its up-to-date Exhibit 1 freely available in writing to any individual who requests a copy of the Exhibit. The classes and subclasses of credit ratings for which an Applicant/NRSRO must provide Transition/Default Matrices are (as applicable):

(A) The class of credit ratings described in Section 3(a)(62)(B)(i) of the Exchange Act (financial institutions, brokers, or dealers).

(B) The class of credit ratings described in Section 3(a)(62)(B)(ii) of the Exchange Act (insurance companies);

(C) The class of credit ratings described in Section 3(a)(62)(B)(iii) of the Exchange Act (corporate issuers);

(D) The following subclasses of credit ratings described in Section 3(a)(62)(B)(iv) of the Exchange Act (issuers of asset-backed securities) and, to the extent not described in Section 3(a)(62)(B)(iv), any security or money market instrument issued by an asset pool or as part of any asset-backed securities transaction:

(i) Residential mortgage backed securities ("RMBS") (for the purposes of Exhibit 1, RMBS means a securitization primarily of residential mortgages);

(ii) Commercial mortgage backed securities ("CMBS") (for the purposes of Exhibit 1, CMBS means a securitization primarily of commercial mortgages);

(iii) Collateralized loan obligations ("CLOs") (for the purposes of Exhibit 1, a CLO means a securitization primarily of commercial loans);

(iv) Collateralized debt obligations ("CDOs") (for the purposes of Exhibit 1, a CDO means a securitization primarily of other debt instruments such as RMBS, CMBS, CLOs, CDOs, other asset backed securities, and corporate bonds);

(v) Asset-backed commercial paper ("ABCP") (for the purposes of Exhibit 1, ABCP means short term notes issued by a structure that securitizes a variety of financial assets (e.g., trade receivables or credit card receivables), which secure the notes);

(vi) Other asset-backed securities ("other ABS") (for the purposes of Exhibit 1, other ABS means a securitization primarily of auto loans, auto leases, floor plan financings, credit card receivables, student loans, consumer loans, or equipment leases); and

(vii) Other structured finance products ("other SFPs") (for the purposes of Exhibit 1, other SFPs means any structured finance product not identified in subparagraphs (i) through (vi) above—the Applicant/NRSRO must provide a description of the products in this subclass); and

(E) The following subclasses of credit ratings described in Section 3(a)(62)(B)(v) of the Exchange Act (issuers of government securities, municipal securities, or securities issued by a foreign government):

(i) Sovereign issuers;

(ii) United States public finance; and

(iii) International public finance.

(2) The Transition/Default Matrices for applicable classes and subclasses of credit ratings must be presented in the same order that the classes and subclasses of credit ratings are identified in paragraphs (1)(A) through (E) above. For a given class or subclass, Transition/Default Matrices must be presented in the following order: 1-year matrix, 3-year matrix and then 10-year matrix. If the Applicant/NRSRO has not been determining credit ratings in the applicable class or subclass for the length of time necessary to produce a 1-, 3-, and/or 10-year Transition/Default Matrix, it must explain that fact in the location where the Transition/Default Matrix would have been presented in the Exhibit. The Applicant/NRSRO must clearly define, after the presentation of all applicable Transition/Default Matrices, each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for each class and subclass of credit ratings in any Transition/Default Matrix presented in the Exhibit. In, addition the Applicant/NRSRO must clearly explain the conditions under which it classifies obligors, securities, or money market instruments as being in default. Next, the Applicant/NRSRO must provide the uniform resource locator (URL) of its corporate Internet Web site where the credit rating histories required to be disclosed pursuant to 17 CFR 17g–7(b) will be located (in the case of an Applicant) or are located (in the case of an NRSRO). Exhibit 1 must contain no performance measurement statistics or information other than as described in, and required by, these Instructions for Exhibit 1; except that the Applicant/NRSRO may provide after the presentation of all required Transition/Default Matrices and other disclosures the Internet Web site URLs where other information relating to performance

measurement statistics of the Applicant/NRSRO is located.

(3) The Transition/Default Matrices must be presented using the format of the sample matrix ("Sample Matrix") below. The top row of a Transition/Default Matrix (the "header row") must contain column headings. The first and second cells in the header row must contain the headings, respectively: "Credit Rating Scale" and "Number of Ratings Outstanding as of [insert applicable date]." The applicable date is the date 1, 3, or 10 years prior to the most recent calendar year end depending on whether the Transition/Default Matrix is for a 1-, 3-, or 10-year period. The next sequence of cells in the header row must contain, from left to right, each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch. The Applicant/NRSRO must not include a "default" category if its rating scale has such a category. The next headings must be in the following order, from left to right, "Default" (see explanation below), "Paid Off" (see explanation below), and "Withdrawn (other)" (see explanation below). The first column of a Transition/Default Matrix must have a separate cell containing each symbol, number, or score in the rating scale used by the Applicant/NRSRO to denote a credit rating category and notches within a category for the applicable class or subclass of credit ratings in descending order from the highest to the lowest notch. The Applicant/NRSRO must not include a "default" category in the column if its rating scale has such a category. The last cell of the first column must contain the word "Total." Finally, the Transition/Default Matrix must have a title identifying the applicable class or subclass of credit ratings, the period covered, and the start date and end date of the period.

The Transition/Default Matrix must resemble the Sample Matrix below except that the number of credit rating symbols depicted in the cells of the first column and header row of a matrix will depend on the number of notches in the applicable rating scale of the Applicant/NRSRO (excluding a "default" category).

CORPORATE ISSUERS—10-YEAR TRANSITION AND DEFAULT RATES
[December 31, 2000 through December 31, 2010]

Credit rating scale	Number of ratings outstanding as of 12/31/2000	AAA	AA	A	BBB	BB	B	CCC	CC	C	Default	Paid off	Withdrawn (other)
AAA	10	50%	10%	.....	.....	;	.....	.....	.....	.....	.....	40%	.....
AA	2,000	1%	39%	12%	10%	8%	5%	4%	.....	.....	1%	19%	1%
A	4,000	.....	6%	34%	15%	10%	6%	4%	3%	.....	2%	18%	2%
BBB	3,600	.....	2%	9%	28%	15%	10%	6%	5%	1%	4%	17%	3%
BB	1,000	.....	.....	2%	4%	20%	14%	5%	.....	.....	2%	16%	37%
B	500	.....	.....	1%	3%	6%	20%	20%	15%	.....	15%	15%	5%
CCC	300	.....	.....	.....	.....	4%	6%	15%	25%	20%	20%	4%	6%
CC	200	.....	.....	.....	.....	.....	2%	8%	10%	38%	30%	2%	10%
C	160	.....	.....	.....	.....	.....	.....	2%	8%	10%	67%	1%	12%
Total	11,770	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

(4) An Applicant/NRSRO must populate the cells in the columns and rows of a Transition/Default Matrix in the following manner:

(A) *Second Column Showing Number of Ratings Outstanding as of the Period Start Date.* To populate the cells of this column, the Applicant/NRSRO must determine the number of obligors, securities, and money market instruments in the applicable class or subclass of credit ratings that were assigned an outstanding credit rating as of the period start date (cumulatively, the "start-date cohort"). In determining the start-date cohort, the Applicant/NRSRO must exclude any obligors, securities, or money market instruments that the NRSRO classified as in default as of the start date. Next, the Applicant/NRSRO must determine the number of obligors, securities, and money market instruments in the start-date cohort assigned a credit rating (other than an expected or preliminary credit rating) as of the start date in each notch represented in the "Credit Rating Scale" column. The Applicant/NRSRO must populate the cells of this column with the number of obligors, securities, and/or money market instruments assigned a credit rating in each notch and in the bottom cell the total number of credit ratings in the start-date cohort.

(B) *Rows Representing Credit Rating Notches.* Each row representing a credit rating notch must contain percents indicating the credit rating outcomes of all the obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date. The percents in a row must add up to 100%. To compute the percents for each row representing a notch in the rating scale in the Transition/Default Matrix:

(i) The Applicant/NRSRO must determine the number of obligors, securities, and money market instruments assigned a credit rating at that notch as of the period start-date that were assigned a credit rating at the same notch as of the period end date. This number must be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date and the percent must be entered in the column representing the same notch. To determine this percent, the Applicant/NRSRO must use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.

(ii) The Applicant/NRSRO must determine the number of obligors, securities, and money market instruments assigned a credit rating at that notch as of the period start date that were assigned a credit rating at each other notch as of the period end date. These numbers must be expressed as percents of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date and the percents must be entered in the columns representing each different notch. To determine these percents, the Applicant/NRSRO must use the credit rating at the notch assigned to the obligor, security, or money market instrument as of the period end date and not a credit rating at any other notch assigned to the obligor, security, or money market instrument between the period start date and the period end date.

(iii) The Applicant/NRSRO must determine the number of obligors, securities, and money market

instruments assigned a credit rating at that notch as of the period start date that went into *Default* (see explanation below) at any time during the applicable time period. This number must be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date and the percent must be entered in the *Default* column. To determine this percent, the Applicant/NRSRO must classify an obligor, security, or money market instrument as having gone into *Default* if the conditions in either (a) or (b) (or in both (a) and (b)) are met:

(a) The obligor failed to timely pay principal or interest due according to the terms of an obligation during the applicable period or the issuer of the security or money market instrument failed to timely pay principal or interest due according to the terms of the security or money market instrument during the applicable period; or

(b) The Applicant/NRSRO classified the obligor, security, or money market instrument as having gone into default using its own definition of "default" during the applicable period.

An obligor, security, or money market instrument that goes into in *Default* as defined in this paragraph (4)(B)(iii) must be classified as in *Default* even if the Applicant/NRSRO assigned a credit rating to the obligor, security, or money market instrument at a notch above default in its rating scale on or after the event of *Default* or withdrew the credit rating on or after the event of *Default.*

(iv) The Applicant/NRSRO must determine the number of obligors, securities, and money market instruments assigned a credit rating at that notch as of the period start date that *Paid Off* (see explanation below) at any time during the applicable time period. This number must be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date and the percent must be entered in the *Paid Off* column. To determine this percent, the Applicant/NRSRO must classify an obligor, security, or money market instrument as *Paid Off* if the conditions in either (a) or (b) are met;

(a) The obligor extinguished the obligation during the applicable time period by paying in full all outstanding principal and interest due on the obligation according to the terms of the obligation (e.g., because the obligation matured, was called, or was prepaid); and the Applicant/NRSRO withdrew the credit rating because the obligation was extinguished; or

(b) The issuer of the security or money market instrument extinguished its obligation with respect to the security or money market instrument during the applicable time period by paying in full all outstanding principal and interest due according to the terms of the security or money market instrument (e.g., because the security or money market instrument matured, was called, or was prepaid); and the Applicant/NRSRO withdrew the credit rating for the security or money market instrument because the obligation was extinguished.

(v) The Applicant/NRSRO must determine the number of obligors, securities, and money market instruments assigned a credit rating at that notch as of the period start date for which the Applicant/NRSRO withdrew a credit rating assigned to the obligor, security, or money market instrument at any time during the applicable time period for a reason other than *Default* (as described in paragraph (4)(B)(iii)) or *Paid-Off* (as described in paragraph (4)(B)(iv)). This number must be expressed as a percent of the total number of obligors, securities, and/or money market instruments assigned a credit rating at that notch as of the period start date and the percent must be entered in the *Withdrawn (other)* column. The Applicant/NRSRO must classify the obligor, security, or money market instrument as *Withdrawn (other)* even if the Applicant/NRSRO assigned a credit rating to the obligor, security, or money market instrument after withdrawing its credit rating.

Exhibit 2. Provide in this Exhibit a general description of the procedures and methodologies used by the Applicant/NRSRO to determine credit ratings, including unsolicited credit ratings within the classes of credit ratings for which the Applicant/NRSRO is seeking registration or is registered. The description must be sufficiently detailed to provide users of credit ratings with an understanding of the processes employed by the Applicant/NRSRO in determining credit ratings, including, as applicable, descriptions of: Policies for determining whether to initiate a credit rating; a description of the public and non-public sources of information used in determining credit ratings, including information and analysis provided by third-party vendors; whether and, if so, how information about verification performed on assets underlying or referenced by a security or money market instrument issued by an asset pool or as part of any asset-backed or securities transaction is relied on in determining credit ratings; the quantitative and qualitative models and metrics used to determine credit ratings, including whether and, if so, how assessments of the quality of originators of assets underlying or referenced by a security or money market instrument issued by an asset pool or as part of any asset-backed or securities transaction factor into the determination of credit ratings; the methodologies by which credit ratings of other credit rating agencies are treated to determine credit ratings for securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgaged-backed securities transaction; the procedures for interacting with the management of a rated obligor or issuer of rated securities or money market instruments; the structure and voting process of committees that review or approve credit ratings; procedures for informing rated obligors or issuers of rated securities or money market instruments about credit rating decisions and for appeals of final or pending credit rating decisions; procedures for monitoring, reviewing, and updating credit ratings, including how frequently credit ratings are reviewed, whether different models or criteria are used for ratings surveillance than for determining initial ratings, whether changes made to models and criteria for determining initial ratings are applied retroactively to existing ratings, and whether changes made to models and criteria for performing ratings surveillance are incorporated into the models and criteria for determining initial ratings; and procedures to withdraw, or suspend the maintenance of, a credit rating. An Applicant/NRSRO may provide in Exhibit 2 the location on its corporate Internet Web site where additional information about the procedures and methodologies is located.

Exhibit 3. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to prevent the misuse of material, nonpublic information pursuant to Section 15E(g) of the Exchange Act and 17 CFR 240.17g–4. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 4. Provide in this Exhibit information about the organizational structure of the Applicant/NRSRO, including, as applicable, an organizational chart that identifies, as applicable, the ultimate and sub-holding companies, subsidiaries, and material affiliates of the Applicant/NRSRO; an organizational chart showing the

divisions, departments, and business units of the Applicant/NRSRO; and an organizational chart showing the managerial structure of the Applicant/NRSRO, including the designated compliance officer identified in Item 4.

Exhibit 5. Provide in this Exhibit a copy of the written code of ethics the Applicant/NRSRO has in effect or a statement of the reasons why the Applicant/NRSRO does not have a written code of ethics in effect.

Exhibit 6. Identify in this Exhibit the types of conflicts of interest relating to the issuance of credit ratings by the Applicant/NRSRO that are material to the Applicant/NRSRO. First, identify the conflicts described in the list below that apply to the Applicant/NRSRO. The Applicant/NRSRO may use the descriptions below to identify an applicable conflict of interest and is not required to provide any further details. Second, briefly describe any other type of conflict of interest relating to the issuance of credit ratings by the Applicant/NRSRO that is not covered in the descriptions below that is material to the Applicant/NRSRO (for example, one the Applicant/NRSRO has established specific policies and procedures to address):

The Applicant/NRSRO is paid by issuers or underwriters to determine credit ratings with respect to securities or money market instruments they issue or underwrite.

- The Applicant/NRSRO is paid by obligors to determine credit ratings of the obligors.
- The Applicant/NRSRO is paid for services in addition to determining credit ratings by issuers, underwriters, or obligors that have paid the Applicant/NRSRO to determine a credit rating.
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons may use the credit ratings of the Applicant/NRSRO to comply with, and obtain benefits or relief under, statutes and regulations using the term "nationally recognized statistical rating organization."
- The Applicant/NRSRO is paid by persons for subscriptions to receive or access the credit ratings of the Applicant/NRSRO and/or for other services offered by the Applicant/NRSRO where such persons also may own investments or have entered into transactions that could be favorably or adversely impacted by a credit rating issued by the Applicant/NRSRO.
- The Applicant/NRSRO allows persons within the Applicant/NRSRO to:
  - Directly own securities or money market instruments of, or have other direct ownership interests in, obligors or issuers subject to a credit rating determined by the Applicant/NRSRO.
  - Have business relationships that are more than arms length ordinary course business relationships with obligors or issuers subject to a credit rating determined by the Applicant/NRSRO.
- A person associated with the Applicant/NRSRO is a broker or dealer engaged in the business of underwriting securities or money market instruments (identify the person).
- The Applicant/NRSRO has any other material conflict of interest that arises from the issuances of credit ratings (briefly describe).

Exhibit 7. Provide in this Exhibit a copy of the written policies and procedures established, maintained, and enforced by the Applicant/NRSRO to address and manage conflicts of interest pursuant to Section 15E(h) of the Exchange Act. Do not include any information that is proprietary or that would diminish the effectiveness of a specific policy or procedure if made publicly available.

Exhibit 8. Provide in this Exhibit the following information about the Applicant/NRSRO's credit analysts and the persons who supervise the credit analysts:

- The total number of credit analysts (including credit analyst supervisors).
- The total number of credit analyst supervisors.
- A general description of the minimum qualifications required of the credit analysts, including education level and work experience (if applicable, distinguish between junior, mid, and senior level credit analysts).
- A general description of the minimum qualifications required of the credit analyst supervisors, including education level and work experience.

Exhibit 9. Provide in this Exhibit the following information about the designated compliance officer (identified in Item 4) of the Applicant/NRSRO:

- Name.
- Employment history.
- Post secondary education.
- Whether employed by the Applicant/NRSRO full-time or part-time.

Exhibit 10. Provide in this Exhibit a list of the largest users of credit rating services of the Applicant by the amount of net revenue earned by the Applicant attributable to the person during the fiscal year ending immediately before the date of the initial application. First, determine and list the 20 largest *issuers* and *subscribers* in terms of net revenue. Next, add to the list any *obligor* or *underwriter* that, in terms of net revenue during the fiscal year, equaled or exceeded the 20th largest issuer or subscriber. In making the list, rank the persons in terms of net revenue from largest to smallest and include the net revenue amount for each person. For purposes of this Exhibit:

Net revenue means revenue earned by the Applicant for any type of service or product provided to the person, regardless of whether related to credit rating services, and net of any rebates and allowances the Applicant paid or owes to the person; and

Credit rating services means any of the following: Rating an obligor (regardless of whether the obligor or any other person paid for the credit rating); rating an issuer's securities or money market instruments (regardless of whether the issuer, underwriter, or any other person paid for the credit rating); and providing credit ratings, credit ratings data, or credit ratings analysis to a subscriber. An NRSRO is not required to make this Exhibit publicly available on its corporate Internet Web site, pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 10 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g–3).

Exhibit 11. Provide in this Exhibit the financial statements of the Applicant, which must include a balance sheet, an income statement and statement of cash flows, and a statement of changes in ownership equity, audited by an independent public accountant, for each of the three fiscal or calendar years ending immediately before the date of the Applicant's initial application to the Commission, subject to the following:

- If the Applicant is a division, unit, or subsidiary of a parent company, the Applicant may provide audited consolidated financial statements of its parent company.
- If the Applicant does not have audited financial statements for one or

more of the three fiscal or calendar years ending immediately before the date of the initial application, the Applicant may provide unaudited financial statements for the applicable year or years, but must provide audited financial statements for the fiscal or calendar year ending immediately before the date of the initial application.

Attach to the unaudited financial statements a certification by a person duly authorized by the Applicant to make the certification that the person has responsibility for the financial statements and that to the best knowledge of the person making the certification the financial statements fairly present, in all material respects, the Applicant's financial condition, results of operations, and cash flows for the period presented.

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet Web site, pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 11 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g–3).

Exhibit 12. Provide in this Exhibit the following information, as applicable, and which is not required to be audited, regarding the Applicant's aggregate revenues for the fiscal or calendar year ending immediately before the date of the initial application:

- Revenue from determining and maintaining credit ratings;
- Revenue from subscribers;
- Revenue from granting licenses or rights to publish credit ratings; and
- Revenue from all other services and products offered by your credit rating organization (include descriptions of any major sources of revenue).

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet Web site, pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 12 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g–3).

Exhibit 13. Provide in this Exhibit the approximate total and median annual compensation of the Applicant's credit analysts for the fiscal or calendar year ending immediately before the date of this initial application. In calculating total and median annual compensation, the Applicant may exclude deferred compensation, provided such exclusion is noted in the Exhibit.

An NRSRO is not required to make this Exhibit publicly available on its corporate Internet Web site pursuant to Exchange Act Rule 17g–1(i). An NRSRO may request that the Commission keep this Exhibit confidential by marking each page "Confidential Treatment" and complying with Commission rules governing confidential treatment (*See* 17 CFR 200.80 and 17 CFR 200.83). The Commission will keep the information and documents in the Exhibit confidential upon request to the extent permitted by law. (Note: After registration, Exhibit 13 should not be updated with the filing of the annual certification. Instead, similar information must be filed with the Commission not more than 90 days after the end of each fiscal year pursuant to Exchange Act Rule 17g–3).

I. EXPLANATION OF TERMS.

1. COMMISSION—The U. S. Securities and Exchange Commission.

2. CREDIT RATING [Section 3(a)(60) of the Exchange Act]—An assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

3. CREDIT RATING AGENCY [Section 3(a)(61) of the Exchange Act]—Any person:

- Engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;
- Employing either a quantitative or qualitative model, or both to determine credit ratings; and
- Receiving fees from either issuers, investors, other market participants, or a combination thereof.

4. NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION [Section 3(a)(62) of the Exchange Act]—A credit rating agency that:

- Issues credit ratings certified by qualified institutional buyers in accordance with section 15(a)(1)(B)(ix) of the Exchange Act with respect to:
  - Financial institutions, brokers, or dealers;
  - Insurance companies;
  - Corporate issuers;
  - issuers of asset-backed securities;
  - issuers of government securities, municipal securities, or securities issued by a foreign government; or
  - a combination of one or more of the above; and
- is registered as an NRSRO.

6. PERSON—An individual, partnership, corporation, trust, company, limited liability company, or other organization (including a separately identifiable department or division).

7. PERSON WITHIN AN APPLICANT/NRSRO—The person filing or furnishing, as applicable, Form NRSRO identified in Item 1, any credit rating affiliates identified in Item 3, and any partner, officer, director, branch manager, or employee of the person or the credit rating affiliates (or any person occupying a similar status or performing similar functions).

8. SEPARATELY IDENTIFIABLE DEPARTMENT OR DIVISION—A unit of a corporation or company:

- that is under the direct supervision of an officer or officers designated by the board of directors of the corporation as responsible for the day-to-day conduct of the corporation's credit rating activities for one or more affiliates, including the supervision of all employees engaged in the performance of such activities; and
- for which all of the records relating to its credit rating activities are separately created or maintained in or extractable from such unit's own facilities or the facilities of the corporation, and such records are so maintained or otherwise accessible as to permit independent examination and enforcement by the Commission of the Exchange Act and rules and regulations promulgated thereunder.

8. QUALIFIED INSTITUTIONAL BUYER [Section 3(a)(64) of the Exchange Act]—An entity listed in 17 CFR 230.144A(a) that is not affiliated with the credit rating agency.

19. Section 249b.400 and Form ABS Due Diligence-15E are added to read as follows:

§ 249b.400 Form ABS Due Diligence-15E, Certification of third-party provider of due diligence services for asset-backed securities

Note: The text of Form ABS Due Diligence-15E will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM ABS DUE DILIGENCE-15E

CERTIFICATION OF PROVIDER OF THIRD-PARTY DUE DILGENCE SERVICES FOR ASSET-BACKED SECURITIES

Pursuant 17 CFR 240.17g-10, this Form must be used by a person providing third-party due diligence services in connection with an asset-backed security to comply with Section 15E(s)(4)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78o-7(s)(4)(B)). Section 15E(s)(4)(B) of the Securities Exchange Act of 1934 requires a person providing the due diligence services to provide a written certification to any nationally recognized statistical rating organization that produces a credit rating to which such due diligence services relate.

Item 1. Identity of the person providing third-party due diligence services

Legal Name:_____

Business Name (if Different):_____

Principal Business Address:_____

_____

Item 2. Identity of the person who paid the person to provide due diligence services

Legal Name:_____

Business Name (if Different):_____

Principal Business Address:_____

_____

Item 3. Credit rating criteria

If the manner and scope of the due diligence performed by the third party satisfied the criteria for due diligence published by a nationally recognized statistical rating organization, identify the nationally recognized statistical rating organization and the title and date of the published criteria (more than one nationally recognized statistical rating organization can be identified).

Identity of NRSRO	Title and Date of Criteria

Item 4. Description of the due diligence performed

Provide a description of the scope and manner of the due diligence services provided in connection with the review of assets that is sufficiently detailed to provide an understanding of the steps taken in performing the review. Include in the description: (1) the type of assets that were reviewed; (2) the sample size of the assets reviewed; (3) how the sample size was determined and, if applicable, computed; (4) whether the quality or integrity of information or data about the assets provided, directly or indirectly, by the securitizer or originator of the assets was reviewed and, if so, how the review was conducted; (5) whether the origination of the assets conformed to stated underwriting or credit extension guidelines, standards, criteria or other requirements was reviewed and, if so, how the review was conducted; (6) whether the value of collateral securing such assets was reviewed and, if so, how the review was conducted; (7) whether the compliance of the originator of the assets with federal, state and local laws and regulations was reviewed and, if so, how the review was conducted; and (8) any other type of review conducted with respect to the assets. This description should be attached to the Form and contain the heading "Item 4." Provide this description regardless of whether the due diligence performed satisfied the criteria for minimum due diligence published by a nationally recognized statistical rating organization.

Item 5. Summary of findings and conclusions of review

Provide a summary of the findings and conclusions that resulted from the due diligence services that is sufficiently detailed to provide an understanding of the findings and conclusions that were conveyed to the person identified in Item 2. This description should be attached to the Form and contain the heading "Item 5."

CERTIFICATION

The undersigned has executed this Form ABS Due Diligence 15E on behalf of, and on the authority of, the person identified in Item 1 of the Form. The undersigned, on behalf of the person, represents that the person identified in Item 1 of the Form conducted a thorough review in performing the due diligence described in Item 4 attached to this Form and that the information and statements contained in this Form, including Items 4 and 5 attached to this Form, which are part of this Form, are accurate in all significant respects.

Name of Person Identified in Item 1:_____

By:_____
(Print name of duly authorized person) (Signature)

Date:_____

By the Commission.

Dated: May 18, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–12659 Filed 6–7–11; 8:45 am]

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FEDERAL REGISTER

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 401
Medicare Program; Availability of Medicare Data for Performance Measurement; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 401

[CMS–5059–P]

RIN 0938–AQ17

Medicare Program; Availability of Medicare Data for Performance Measurement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement new statutory requirements regarding the release and use of standardized extracts of Medicare claims data to measure the performance of providers and suppliers in ways that protect patient privacy. This rule explains how entities can become qualified by CMS to receive standardized extracts of claims data under Medicare Parts A, B, and D for the purpose of evaluation of the performance of providers of services and suppliers.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on August 8, 2011.

ADDRESSES: In commenting, please refer to file code CMS–5059–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the "Submit a comment" instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*5059*–P, P.O. Box 8012, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–*5059*–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period: a. For delivery in Washington, DC— Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD— Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Colleen Bruce, (410) 786–5529.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received at: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received in a timely fashion would also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

On March 23, 2010, the Patient Protection and Affordable Care Act, ("Affordable Care Act") Public Law 111–148, was enacted. Effective January 1, 2012, section 10332 of the Affordable Care Act would amend section 1874 of the Social Security Act (the Act) by adding a new subsection (e) requiring standardized extracts of Medicare claims data under parts A, B, and D be made available to "qualified entities" for the evaluation of the performance of providers of services and suppliers. Such a disclosure is permitted under the Privacy Rule issued under the Health Insurance Portability and Accountability Act as a disclosure "required by law." Qualified entities may use the information obtained under section 1874(e) of the Act for the sole purpose of evaluating the performance of providers of services and suppliers, and to generate specified public reports. Qualified entities may receive data for one or more specified geographic areas and must pay a fee equal to the cost of making the data available. Congress also required that qualified entities combine claims data from sources other than Medicare with the Medicare data when evaluating the performance of providers of services and suppliers. Potential qualified entities that wish to request data under these provisions would have to submit an application to the Secretary that includes, among other things, a description of the methodologies that the applicant proposes to use to evaluate the performance of providers of services and suppliers in the geographic area(s) they select. Qualified entities would generally be required to use standard measures for evaluating the performance of providers of services and suppliers unless the Secretary, in consultation with appropriate stakeholders, determines that use of alternative measures would be more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by standard measures. Reports generated by the qualified entities may only include information on individual providers of services and suppliers in aggregate form, that is, at the provider of services or supplier level, and may not be released to the public until the providers of services and suppliers have had an opportunity to review them and ask for corrections. Congress included a provision at section 1874(e)(3) of the Act to allow the Secretary to take such actions as may be necessary to protect the identity of individuals entitled to or enrolled in Medicare.

We believe the sharing of Medicare data with qualified entities through this program and the resulting reports produced by qualified entities would be an important driver of improving quality and reducing costs in Medicare, as well as for the healthcare system in general. Additionally, we believe this program would increase the transparency of provider and supplier performance, while ensuring beneficiary privacy.

II. Provisions of the Proposed Rule

To implement the new statutory provisions of section 1874(e) of the Act, we are proposing to revise Part 401 by adding a new subpart G, "Availability of Medicare Data for Performance Measurement." The proposals in this rule would be consistent with section 10332 of the Affordable Care Act. Throughout the preamble, we identify options and alternatives to the provisions we propose. We have attempted to take into consideration comments received during the listening session on September 20, 2010. However, we strongly encourage comments on our proposed approach and on alternatives that would help us implement the appropriate requirements and regulatory provisions under section 1874(e) of the Act.

A. Considerations for the Definition, Eligibility Criteria, and Operating Requirements of Qualified Entities

1. Definitions

Section 1874(e)(1) of the Act requires the Secretary to make available to qualified entities data for the evaluation of the performance of providers of services and suppliers, as proposed at Subpart G of this proposed rule. Section 1874(e)(2) of the Act defines a qualified entity as a public or private entity that:

- Is qualified (as determined by the Secretary) to use claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use; and
- Agrees to meet the requirements described in section 1874(e)(4) of the Act and meets such other requirements as the Secretary may specify, such as ensuring security of data.

We have proposed a definition that is consistent with these statutory provisions at 42 CFR 401.702(a). Specifically, we have defined a qualified entity as a public or private entity that: (1) is qualified, as determined by the Secretary, to use claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resources use, and (2) agrees to meet the requirements of the Act and meets stated regulatory requirements at §§ 401.703 through 401.710.

2. Eligibility Criteria

As amended, section 1874(e)(2)(A) of the Act provides the Secretary with discretion to establish criteria to determine whether an entity is qualified to use claims data to evaluate the performance of providers of services and suppliers. In determining the qualified entity eligibility requirements, we sought to balance the need to ensure the production of timely, high quality, usable reports on providers of services and suppliers with the need to protect the privacy and security of beneficiary identifiable data and the need to ensure providers of services and suppliers have the opportunity to review the reports, appeal, and correct errors prior to public release.

We are proposing at § 401.703 to evaluate an organization's eligibility qualifications across three areas: organizational and governance capabilities, addition of claims data from other sources, and data privacy and security. In determining an applicant's eligibility, potential qualified entities would be evaluated individually to ensure they are prepared to meet the requirements in the statute for serving as a qualified entity. We are not planning to limit the number of qualified entities. Any entity that meets the eligibility criteria would be able to become a qualified entity.

a. Organizational and Governance Capabilities

Section 1874(e)(2)(A) of the Act gives the Secretary the authority to establish the criteria to determine whether an entity is qualified to fulfill the requirements of the statute. We propose to thoroughly evaluate potential qualified entities on their organizational and governance capabilities to perform all of the following tasks:

- Accurately calculating quality, efficiency, effectiveness, and resource use measures from claims data, including:
  - Identifying an appropriate method to attribute a particular patient's services to specific providers of services and suppliers.
  - Ensuring the use of approaches to ensure statistical validity such as a minimum number of observations or minimum denominator for each measure.
  - Using methods for risk-adjustment to account for variation in both case-mix and severity among providers of services and suppliers.
  - Identifying methods for handling outliers.
  - Correcting measurement errors and assessing measure reliability.
  - Identifying appropriate peer groups of providers and suppliers for meaningful comparisons.
- Successfully combining claims data from different payers to calculate performance reports.
- Designing, and continuously improving the format of performance reports on providers of services and suppliers.
- Preparing an understandable description of the measures used to evaluate the performance of providers of services and suppliers so that consumers, providers of services and suppliers, health plans, researchers, and other stakeholders can assess performance reports.
- Implementing and maintaining a process for providers of services and suppliers identified in a report to review the report prior to publication, and providing timely responses to provider of services and supplier inquiries regarding requests for data, error correction, and appeals.
- Establishing, maintaining, and monitoring a rigorous data privacy and security program, including disclosing to CMS in its application any inappropriate disclosures of beneficiary identifiable information or HIPAA violations for the preceding 10-year period, and any corrective actions taken to address such issues.
- Accurately preparing performance reports on providers of services and suppliers and making performance report information available to the public in aggregate form, that is, at the provider of services or supplier level.

Applicants would generally be expected to demonstrate expertise and sustained experience on each of these criteria. Generally, an applicant would be considered to have demonstrated expertise and sustained experience on these criteria if the applicant can show that it has been handling claims data and calculating performance measures for a period of at least three years. We believe that to be a successful qualified entity, an applicant would need to have an established track record of profiling providers of services and suppliers. However, we propose to consider applicants with fewer years of experience in handling claims data and calculating performance measures, or limited experience implementing and maintaining a process for providers of services and suppliers to request error correction if the applicant has sufficient

experience in the other areas described above. In all other areas, applicants must demonstrate expertise and sustained experience as stated above. We seek comment on our approach to evaluating qualified entities, and whether three years of demonstrated expertise is sufficient to ensure that only the highest quality entities are admitted to this program.

We note that several of the tasks that are required of the qualified entities necessitate expertise and careful attention to the required processes as outlined below. Due to the importance of ensuring that the qualified entity is able to achieve the goals of the program, we wish to ensure that the qualified entities have the resources to meet their obligations to measure providers of services and suppliers and publish reports under the statute. Therefore, we propose that qualified entity applicants would also need to submit a description of the business model they plan to use for covering the costs of performing the required functions listed below, including paying the fee for the data. We solicit comment on our proposal.

b. Addition of Claims Data From Other Sources

Section 1874(e)(1) and Section 1874(e)(3) of the Act require the Secretary to provide standardized extracts of claims data under Medicare Parts A, B, and D for one or more specified geographic areas and time periods to qualified entities so they can use the information in concert with other claims data to evaluate the performance of providers and suppliers. As discussed in section II.B. below, the qualified entities are to evaluate the performance of providers of services and suppliers using measures that may be calculated from the claims data only. At § 401.702(d), we propose to define claims data, whether from Medicare claims or other sources, to be administrative claims data only, meaning, itemized billing statements from providers of services and suppliers that, except in the context of Part D drug event data, request reimbursement for a list of services and supplies that were provided to a Medicare beneficiary in the fee-for-service context or to a participant in another insurance or entitlement program. Claims data would need to have characteristics and variables similar to the data discussed in section II.C. below. Data from other sources, such as registry data, chart abstracted data, or data from electronic medical records would not be considered claims data.

Section 1874(e)(4)(B)(iii) of the Act requires qualified entities to combine Medicare data made available under this section with claims data from sources other than Medicare in their performance evaluations of providers of services or suppliers. We believe that this provision was intended to make Medicare data available to those already working with other claims data in order to increase sample sizes used to calculate measures and evaluate the performance of providers of services and suppliers. This belief is based on past experiences where measurement entities have expressed an interest in obtaining Medicare data to combine with other claims data to improve the population sample upon which their performance findings are based, and to address concerns expressed by stakeholders regarding small sample sizes in performance reports generated from a single payer source. The relative size of Medicare enrollment makes it one of the largest payers in any given market.

In addition, since Medicare serves an older population with declining health, using claims data from Medicare would provide more opportunities to assess care provided to the chronically ill and other resource-intensive populations than is found in other claims data. The goal expressed by those seeking this data in the past has been that Medicare data, when coupled with other claims data, can provide measurement initiatives with greatly increased sample sizes upon which to calculate more reliable performance results.

The statute requires the inclusion of claims data from other sources, but it does not specify a minimum amount of such data to qualify as a qualified entity. CMS has considered how to best ensure that Medicare data is combined with a sufficient amount of other claims data to meaningfully address some of the concerns regarding sample size and reliability outlined above. We are proposing at § 401.703(a)(2) that applicants demonstrate to CMS that the claims data from other sources, which they are combining with Medicare data, addresses the concerns regarding sample size and reliability expressed by multiple stakeholders regarding the calculation of performance measures from a single payer source. In order to ensure that Medicare data is only made available to qualified entities that have additional claims data from other sources, applicants would not be approved as qualified entities unless they possess the claims data from other sources at the time of their application, and that data meets the requirements outlined above.

We considered imposing a specific threshold amount of additional claims data, but we believe that it would be difficult to precisely establish a threshold amount of data to address concerns about small sample sizes and reliability. We are requesting comments on this policy decision, as well as suggestions for other possible options or alternatives. We are also considering a proposal to require qualified entities to have claims data from two or more other sources. For example, a qualified entity would need to have claims data from two private payers, or one private payer and Medicaid claims data, in order to be eligible to receive Medicare data. We believe that a requirement for claims data from two or more other sources may help further alleviate some of the methodological issues associated with performance measurement based on single-source data. Measurement of a provider of services or supplier based on one other source plus Medicare may still not represent enough of a provider of services' or supplier's patient population to provide meaningful data that would help improve performance. We are considering a proposal to require claims data from two or more other sources to ensure that performance reports produced by qualified entities are as fair a representation as possible of any provider of services' or suppliers' practice to encourage behavior change. We seek comments on this alternative proposal of requiring claims data from two or more other sources to be combined with Medicare claims data, and whether there are particular challenges associated with requiring claims data from multiple sources before a qualified entity can participate in this program.

c. Data Privacy and Security

It is of the utmost importance to CMS that beneficiary identifiable Medicare data remain private and secure. Section 1874(e)(3) of the Act requires the Secretary to take actions necessary to protect the identity of individuals entitled to or enrolled in our programs.

In order to fulfill this obligation, we are proposing at § 401.703(a)(3) to require that applicants demonstrate that they have rigorous privacy and security practices in place to protect the data released to them and have programs in place to train staff on data privacy protections and general data security protocols. Applicants would not be eligible to serve as qualified entities unless CMS determines that they have thoroughly documented data privacy and security practices including enforcement mechanisms. The data privacy and security requirements for qualified entities are discussed in detail at Section II.D.

3. Proposed Operating and Governance Requirements for Serving as a Qualified Entity

CMS recognizes that applicants may not have fully developed plans for every aspect of serving as a qualified entity; however, there are key aspects that we believe are important enough to require the submission of proposed plans as a condition of being approved as a qualified entity. Specifically, we propose at § 401.704 that applicants would submit, as part of their application: (1) The measures they intend to use, including, among other things, the methods of creating and disseminating reports; (2) the report review process they would use to afford providers of services and suppliers with reports confidentially prior to public release, including addressing report recipient requests for data and for error correction; (3) a prototype for the required reports, including any narrative language, and dissemination plans for providing reports to the public. Additional information regarding the application requirements may be found in section II.G. below.

B. Considerations for the Definition, Selection, and Use of Performance Measures by Qualified Entities

Section 1874(e)(2)(A) of the Act requires qualified entities be qualified to use claims data to evaluate the performance of providers of services and suppliers using measures of quality, efficiency, effectiveness, and resource use. Specifically, section 1874(e)(4)(B)(ii)(I) of the Act requires qualified entities requesting standardized extracts of Medicare claims to use standard measures, if available, such as measures endorsed by the entity with a contract under section 1890(a) of the Act, and measures developed pursuant to section 931 of the Public Health Service Act. Section 1874(e)(4)(B)(ii)(II) of the Act also provides for the use of alternative measures by qualified entities if the Secretary, in consultation with appropriate stakeholders, determines that use of such alternative measures would be more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by the standard measures. Qualified entities may only use standard or approved alternative measures to evaluate the performance of providers of services and suppliers using claims data from Medicare parts A, B, or D.

1. Proposed Definition of, and Process for Identifying and Approving Standard Measures for Use by Qualified Entities

For purposes of a qualified entity selecting and using measures to evaluate the performance of providers of services and suppliers, we propose to define at § 401.708(a) a "standard measure" to be a measure that can be calculated using only claims data and that is—(1) endorsed by the entity with a contract under section 1890(a) of the Act; (2) developed pursuant to section 931 of the Public Health Service Act; or (3) was adopted through notice and comment rulemaking and is currently being used in a CMS program that includes performance measurement, even if it is not endorsed by the entity with a contract under section 1890(a) of the Act.

Currently, the entity with a contract under section 1890(a) of the Act is the National Quality Forum (NQF). NQF uses its formal Consensus Development Process to evaluate and endorse consensus standards, including performance measures, on an ongoing basis. It is viewed as a trusted partner in ensuring that any nationally endorsed provider of services and supplier performance measures are subject to rigorous multi-stakeholder scrutiny to ensure they are scientifically valid, address clear performance improvement needs and can be calculated in a manner that does not impose undue burden on providers and suppliers. There are currently hundreds of NQF-endorsed quality measures covering a range of clinicians, settings, and specialties, although not all of these measures can be calculated using only claims data.

A list of currently NQF-endorsed performance measures can be obtained from the NQF Web site at *http://www.qualityforum.org/Measures_List.aspx.* We propose to define any measure endorsed by the entity with a contract under section 1890(a) of the Act which can be calculated from standardized extracts of Medicare parts A, B, or D claims as a standard measure. In addition to endorsed NQF measures, we propose to also define a measure which can be calculated from standardized extracts of Medicare parts A, B, or D claims data that has time-limited NQF endorsement as a standard measure. Measures that are time-limited endorsed that were not developed pursuant to section 931 of the Public Health Service Act, or that are being used by a CMS program that includes performance measurement, would only be considered standard measures until such time as the NQF determines their endorsement status. Time-limited endorsed measures that ultimately receive endorsement would remain standard measures for as long as they remain endorsed, and time-limited endorsed measures that do not ultimately receive endorsement would lose their status as standard measures unless they were developed pursuant to section 931 of the Public Health Service Act, or can be calculated from standardized extracts of Medicare parts A, B, or D claims data, were adopted through notice and comments rulemaking, and are being used in a CMS program that includes quality measurement. Time-limited measures that do not receive NQF endorsement and that were not developed pursuant to Section 931 of the Public Health Act, or are not used in a CMS program that includes performance measurement could however, be submitted for approval as alternative measures through the alternative measure process outlined below at II.B.2.

Section 931 of the Public Health Service Act, as added by Section 3013 of the Affordable Care Act supports the development, improvement, update, or expansion of quality measures for use in Federal health programs. To date, no measures have been developed under this provision. We propose that any measures developed or updated under this provision would also be considered standard measures regardless of their NQF endorsement status, as long as the measures can be calculated from the standardized extracts of Medicare parts A, B, and D claims data available to the qualified entity.

We also propose to include in the definition of standard measure any measure that was adopted through notice and comment rulemaking and that is currently used in a CMS program that involves performance measurement, even if it is not NQF-endorsed or developed under section 931 of the Public Health Service Act, as long as the measure can be calculated from the standardized extracts of Medicare parts A, B, and D claims data available to the qualified entity. For example, several measures in the hospital Inpatient Quality Reporting program beginning in FY 2012 (foreign object retained after surgery, air embolism, catheter-associated urinary tract infection, blood incompatibility, pressure ulcer stages III and IV, falls and trauma, manifestations of poor glycemic control, and vascular catheter associated infection) fit this criteria.

The notice and comment rulemaking process includes a public comment period in which stakeholders are able to express their views regarding the proposed measures. Measures

implemented via the rulemaking process are not finalized until the public comment period closes, the comments are reviewed and considered, and a final rule is published. Because the notice and comment rulemaking process involves extensive opportunity for public input, we believe that measures used in CMS programs, regardless of whether they are endorsed by the NQF or developed under section 931 of the Public Health Service Act, have been subjected to sufficient scrutiny that they can be considered standard measures. We propose to make a list of measures that meet the requirements of being adopted through notice and comment rulemaking and currently being used in a CMS program that includes performance measurement, available in subregulatory guidance.

In using any standard measure, we propose to require that the qualified entity must follow the measure specifications as written, including all numerator and denominator inclusions and exclusions, measured time periods, and specified data sources. We recognize that some measure specifications may require additional customization to implement in specific contexts, but such customization should not change the defined numerator, denominator, and exclusion criteria for the measure.

We invite comments on the proposed definition of standard measures and the proposed requirement for qualified entities to follow the measure specifications as written.

2. Proposed Definition of, and Process for Identifying and Approving Alternative Measures for Use by Qualified Entities

We also recognize that a qualified entity may wish to measure performance in an area for which there are no standard measures. We note that there are several areas of performance measurement with very few available measures that meet the definition of a standard measure as proposed above. We hope to encourage innovation in the development of new claims-based measures to evaluate the performance of providers of services and suppliers through the use of alternative measures. While the statute does not require the Secretary to allow the use of alternative measures, we believe that allowing qualified entities to propose the use of alternative measures encourages the development of additional claims-based performance measures.

For qualified entities wishing to use alternative measures, we propose to adopt an alternative measure selection process through future notice and comment rulemaking that would subject proposed alternative measures to public comment after qualified entities propose candidate alternative measures for the Secretary's consideration. At § 401.708(b)(1), we propose to define "alternative measure" as a measure that is not a standard measure, but that can be calculated using only standardized extracts of Medicare parts A, B, and D claims, and that has been found by the Secretary to be more valid, reliable, responsive to consumer preferences, cost effective, or relevant to dimensions of quality and resource use not addressed by standard measures.

As discussed above, section 1874(e)(4)(B)(ii)(II) of the Act permits the use of alternative measures if the proposed alternative measure is more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use than existing claims-based standard measures. If there is a claims-based standard measure for the clinical area or topic(s) that the qualified entity chooses to measure, we propose that the qualified entity must use the standard measure in lieu of any alternative measures, unless the qualified entity can provide detailed scientific justification for asserting that the proposed alternative measure in that clinical area or topic is more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use than the existing claims-based standard measure, and such assertions are accepted through the notice and comment rulemaking process outlined below.

Similarly, in the case where a standard measure was not previously available for a particular clinical area or condition, but such a measure subsequently becomes available, we propose that qualified entities must cease use of the alternative measure and switch to the standard measure within 6 months (for example, if a standard measure becomes available in February 2013, either through being endorsed by the entity with a contract under section 1890(a) of the Act, developed pursuant to section 931 of the Public Health Service Act, or adopted through notice and comment rulemaking to be used in a CMS program that includes performance measurement, qualified entities would have to begin using the standard measure instead of the alternative measure in any reports by August 2013). If the qualified entity wishes to continue to use the alternative measure, then it must provide the scientific justification outlined above to obtain approval for the use of alternative measures when a standard measure for the clinical area or condition(s) that the qualified entity chooses to measure is available.

In order to provide us with the information necessary to determine whether an alternative measure is more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by the standard measures as required by section 1874(e)(4)(B)(ii)(II) of the Act, we propose that the qualified entity would need to submit to the Secretary the following information about a proposed alternative measure:

- The name of the alternative measure that the qualified entity is requesting the Secretary to consider as an alternative measure.
- The name of the alternative measure's developer or owner.
- Detailed specifications for the alternative measure.
- Information demonstrating how the alternative measure is more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by standard measures.

We solicit comments on our proposals regarding alternative measures, and we welcome comments on whether any additional information regarding proposed alternative measures should be required in order to request the Secretary's consideration of a candidate alternative measure.

Section 1874(e)(4)(B)(ii)(II) of the Act further requires the Secretary to review the candidate alternative measures in consultation with appropriate stakeholders in order to determine if an alternative measure would be more valid, reliable, responsive to consumer preferences, cost-effective or relevant to dimensions of quality and resource use not addressed by standard measures. In order to obtain consultation with appropriate stakeholders, we propose that once all qualified entities have submitted the above information regarding a proposed alternative measures, we would use the notice and comment rulemaking process to obtain public comment on approving the measures as alternative measures. We solicit comment on our proposal to engage in consultation with appropriate stakeholders through notice and comment rulemaking and we also welcome comments on alternative processes to consider for meeting the stakeholder consultation requirement.

The statute requires the Secretary to make the final determination regarding whether an alternative measure is more valid, reliable, responsive to consumer

preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by standard measures. The Secretary would consider the information received from the qualified entity and other stakeholders during the notice and comment rulemaking process in order to determine whether a proposed alternative measure meets the statutory criteria for approval as an alternative measure. Once an alternative measure has been approved by the Secretary, the alternative measure would be available for use by all qualified entities, not just the submitting entity.

Any measure that is not approved as an alternative measure may not be used to evaluate the performance of providers of services and suppliers using data from the qualified entity program. In the event additional information is available for an alternative measure that was previously denied approval, the alternative measure may be resubmitted to the Secretary for consideration.

Because our proposals for the approval process of alternative measures would require notice and comment rulemaking, it would be logistically challenging for alternative measures to be approved in time to enable measure calculation and reporting of alternative measures in the first year of the program. While qualified entities would be able to submit alternative measures for consideration during the first year of the program, the approval process would likely not conclude in time to use the alternative measure in the first year of the program.

Depending on the volume and timing of alternative measure submissions, we anticipate conducting the notice and comment rulemaking process on an annual basis. We are proposing to establish an annual deadline of May 31 for the submission of proposed alternative quality measures in order to allow for the measures to go through notice and comment rulemaking prior to the start of the next calendar year. The notice and comment rulemaking period generally takes 6 months from the publication of a proposed rule to the effective date of a final rule, so the alternative measures submitted by May 31 would be ready for use in the following calendar year, i.e., a measure submitted by May 31, 2012 would be available for calendar year 2013. If no proposed alternative measures are received by the annual deadline, we would not publish a rule. Proposed alternative measures submitted after the annual deadline would be considered for rulemaking during the following calendar year.

We believe this proposed approach is adequate because:

- We have proposed an expansive definition of what constitutes a standard measure (including non-NQF endorsed measures which can be calculated from standardized extracts of Medicare parts A, B, and D claims if they were adopted through notice and comment rulemaking and are currently being used in CMS programs that include quality measurement), and this would greatly increase the number of standard measures available for use by qualified entities.
- It is appropriate for qualified entities to focus on well established measures that are either NQF-endorsed or used in CMS programs in their first year of operation as qualified entities.

We solicit comment on our proposals regarding the approval process for alternative measures.

As with standard measures, when using an alternative measure approved by the Secretary, we propose to require that the qualified entity follow the measure specifications as written, including all numerator and denominator inclusions and exclusions, measured time periods, and specified data sources. We recognize that some measure specifications may require additional customization to implement the measure in specific contexts, but such customization should not change the defined numerator, denominator, and exclusion criteria for the measure. We invite comments on the proposed requirement for qualified entities to follow the measure specifications as written.

3. Selection and Justification of Measures by Qualified Entities

We propose, at § 401.704(a), to require that qualified entities provide a description of each standard or alternative measure they plan to use to calculate the performance of providers of services and suppliers as part of their application. This description should include the name of the measure, the name of the measure developer/owner, and the measure specifications including the numerator and the denominator. In addition, we propose to require an explanation of the applicant's rationale for selecting the measure, which would include a description of the relationship of any proposed measure (standard or alternative) to existing measurement efforts, and the relevancy of each proposed measure to the population(s) in the geographic area(s) the applicant is proposing to serve. The rationale would also include a specific description of the geographic area(s) the applicant intends to serve and a specific description of how each measure evaluates providers of services and suppliers on quality, efficiency, effectiveness, and/or resource use. Finally, we propose to require an applicant to provide a description of the methodologies it intends to use in creating reports with respect to attribution of beneficiaries to providers of services and suppliers, benchmarking performance data, and severity and case-mix adjustments.

We propose at § 401.706(a)(1) to allow a qualified entity to calculate and report measures that were not included in its initial application if the qualified entity submits the information described above about the additional measure(s) to CMS no less than ninety (90) days prior to the anticipated date for the confidential distribution of reports using those measures to providers of services and suppliers. We would review this information and approve or disapprove the use of the measure. We propose barring qualified entities from using a measure that has not been approved by CMS, even if CMS' review takes longer than ninety days.

4. Methodologies Used in Performance Reports

Section 1874(e)(4)(B)(I) of the Act requires qualified entities to submit a description of the methodologies that they would use to evaluate the performance of providers services and suppliers. In keeping with this requirement, we have proposed § 401.704(a)(5), which requires an applicant to submit a description of methodologies it intends to use in creating reports. We believe, however, that a review of methodologies is inadequate in the absence of a review of the abilities of the qualified entity to appropriately apply those methodologies. Therefore, we propose at § 401.703(a)(1) that in order to be eligible to serve as a qualified entity, applicants must demonstrate expertise and sustained experience in several areas necessary for performance measurement.

5. Reports and Reporting

Section 1874(e)(4)(C)(ii) of the Act requires qualified entities to make their draft reports available in a confidential manner to providers of services and suppliers identified in the reports before such reports are released publicly in order to offer them an opportunity to review these reports, and, if appropriate, appeal to request correction of any errors. We propose to require the qualified entities to include a plan for establishing and maintaining these appeal and correction processes in their

application materials, as we have stated in proposed § 401.704(b). The plan must clearly describe how the qualified entity would make providers of services and suppliers aware of the process and establish procedures, including timeframes, for how providers of services and suppliers can request data from the qualified entity and request error corrections in the reports before the reports are made public.

After reports have been shared confidentially with providers of services and suppliers, and any errors have been corrected, Section 1874(e)(4)(C)(iv) of the Act requires the reports to be made available to the public. As discussed further below in Section II.E., in cases where provider requests for error correction cannot be resolved prior to a date specified by the qualified entity (at least 30 business days after the report was originally shared with providers of services and suppliers), the reports would be released publically with information that a provider of services or supplier error correction is ongoing. As stated in the statute at Section 1874(e)(4)(C)(iii) of the Act, the reports must include "an understandable description" of the measures, rationale for use, methodology (including risk-adjustment and physician attribution), data specifications and limitations, and sponsors. We interpret "an understandable description" to mean any descriptions that can be easily read and understood by a lay person. Additionally, the reports to the public may only include data on providers of services or suppliers at the provider of services or supplier level with no claim or person-level information to ensure beneficiary privacy.

Pursuant to Section 1874(e)(4)(B)(vi) of the Act, we propose requiring qualified entities to submit prototype reports for both the reports they would send to providers of services and suppliers, and the reports they would release to the public (if they are different) in their application, including the narrative language they plan to use in the reports to describe the data and results. The prototype report should also contain an easily comprehensible description of the proposed measures, the rationale for the use of those measures, a description of the methodologies to be used, and a description of the data specifications and limitations.

We have given extensive consideration to when in the process qualified entities should submit these prototype reports to CMS. One option would be for qualified entities to submit prototype reports with their applications to become qualified entities. As outlined above, one of the eligibility criteria for qualified entities is demonstrated expertise and experience in designing, disseminating, and continuously improving performance reports to providers of services and suppliers. Given this criteria, it seems reasonable to assume that qualified entities would be in a position to provide CMS with prototype reports at the time of their applications.

A countervailing argument would be that qualified entities may need some time working with Medicare data and claims data from other sources before they would be in a position to identify an appropriate format for the required performance reports. This scenario would support requiring the submission of the prototype report sometime after an organization has been approved as a qualified entity, but at a time prior to the confidential release to providers of services and suppliers. Under this scenario, the qualified entity would receive Medicare data without having to demonstrate that they had considered how they could use that data to produce measure results.

While we believe that qualified entities may identify changes that would be necessary as they work with the data, we believe that it is appropriate to expect that they have sufficiently considered these reporting obligations as they consider their desires to apply for qualified entity status, and that such considerations would include at least an initial concept of what they could provide in the reports. Therefore, despite the concern that qualified entities would need some time with the data to identify the appropriate format for reports, we believe that qualified entities should have the expertise and skills to be able to submit prototype reports at the time of their applications to become qualified entities.

In recognition of the advances that could be made to these prototypes as the qualified entities work, we propose, at § 401.706(a)(2), providing for a process whereby they can modify the initial prototypes as long as these modifications are submitted to, and approved by, CMS. We propose requiring these submissions no less than 90 days prior to the confidential release of report to providers of services and suppliers. We would review the modified prototype report and make a determination regarding the use of the new report. This determination would be based on the extent to which the proposed changes make the description of the measures used in the report more understandable. We propose barring qualified entities from using a report that has not been approved by CMS, even if CMS' review takes longer than 90 days.

In addition, we propose to require the submission of plans for making the reports available to the public at the time of application. To the extent that the report formats or delivery mechanisms differ from those proposed at the time of application, we propose to also require an explanation and justification of those differences no less than 90 days prior to the release of differing report formats or delivery mechanisms.

Finally, at § 401.705(d) we propose requiring qualified entities to produce reports on the performance of providers of services and suppliers at a minimum of at least once a year. If CMS provides qualified entities with yearly updates to the data, as discussed below, we believe qualified entities should be expected to use the updates to produce performance reports. We seek comments on these proposals.

C. Data Extraction and Dissemination

Section 1874(e)(3) of the Act requires the Secretary to provide qualified entities with standardized extracts of claims data from Medicare parts A, B, and D for one or more specified geographic areas and time periods. These data extracts would include information from all seven claim types that are submitted for payment in the Medicare Fee-For-Service Program. Information extracted from institutional claims includes inpatient hospital, outpatient hospital, skilled nursing facility, home health, and hospice services. Information extracted from non-institutional claims includes physician/supplier and durable medical equipment claims. These files contain only final action claims, meaning non-rejected claims for which a payment has been made. All disputes and adjustments have been resolved and details clarified.

Medicare institutional and non-institutional claims include, but are not limited to, the following data elements: beneficiary ID, claim ID, the start and end dates of service, the provider or supplier ID, the principal procedure and diagnosis codes, the attending physician, other physicians, and the claim payment type.

Qualified entities would also be eligible to receive certain Part D claims information for beneficiaries enrolled in the Medicare Fee-For-Service Program. This type of information is known as "drug event" information, as opposed to "claims" information, because prescription drug coverage under Part D is provided by private insurance plans.

These plans have varied pricing methods, and often pay capitated rates. We note that the use of the term "drug event" does not mean this database includes information about adverse reactions to drugs. The key data elements for this database include: beneficiary ID, prescriber ID, drug service date, drug product service ID, quantity dispensed, days' supply, gross drug cost brand name, generic name, drug strength, and indication if the drug is on the formulary of the Part D plan.

All claims files would contain a unique encrypted beneficiary identification number that would allow a qualified entity to link claims for an individual beneficiary. These files would not contain the actual beneficiary Medicare Health Insurance Claim Number.

A comprehensive record layout for all three of these databases is offered at *http://www.ccwdata.org/variables/var_claim_files.php* for institutional claims, *http://www.ccwdata.org/variables/var_claim_files2.php* for non-intuitional claims, and *http://www.ccwdata.org/variables/var_ptd_event.php* for Part D drug events.

The institutional claims database includes the following files:

Inpatient claim file: The Inpatient claim file contains final action claims data submitted by inpatient hospital providers for reimbursement of facility costs. Some of the information contained in this file includes diagnosis, (ICD–9 diagnosis), procedure (ICD–9 procedure code), Medicare Severity—Diagnosis Related Group (MS–DRG), dates of service, reimbursement amount, and hospital provider information. Each observation in this file is at the claim level.

Skilled Nursing Facility claim file: The Skilled Nursing Facility (SNF) claim file contains final action claims data submitted by SNF providers. Some of the information contained in this file includes diagnosis and procedure (ICD–9 diagnosis and ICD–9 procedure code), dates of service, reimbursement amount, and SNF provider number. Each observation in this file is at the claim level.

Outpatient claim file: The Outpatient claim file contains final action claims data submitted by institutional outpatient providers. Examples of institutional outpatient providers include hospital outpatient departments, rural health clinics, renal dialysis facilities, outpatient rehabilitation facilities, comprehensive outpatient rehabilitation facilities, and community mental health centers. Some of the information contained in this file includes diagnosis and procedure (ICD–9 diagnosis, Healthcare Common Procedure Coding System (HCPCS) codes), dates of service, reimbursement amount, outpatient provider number, and revenue center codes. Each observation in this file is at the claim level.

Home Health Agency claim file: The Home Health Agency (HHA) claim file contains final action claims data submitted by HHA providers. Some of the information contained in this file includes the number of visits, type of visit (skilled-nursing care, home health aides, physical therapy, speech therapy, occupational therapy, and medical social services), diagnosis (ICD–9 diagnosis), dates of visits, reimbursement amount, and HHA provider number. Each observation in this file is at the claim level.

Hospice claim file: The Hospice claim file contains final action claims data submitted by Hospice providers. Some of the information contained in this file includes the level of hospice care received (for example, routine home care, inpatient respite care), terminal diagnosis (ICD–9 diagnosis), dates of service, reimbursement amount, and Hospice provider number. Each observation in this file is at the claim level.

The non-institutional claims database includes the following files:

Carrier claim file: The Carrier claim file contains final action claims data submitted by non-institutional providers. Examples of non-institutional providers include physicians, physician assistants, clinical social workers, nurse practitioners, independent clinical laboratories, ambulance providers, and free-standing ambulatory surgical centers. Some of the information contained in this file includes diagnosis and procedure (ICD–9 diagnosis, Healthcare Common Procedure Coding System (HCPCS) codes), dates of service, reimbursement amount, and non-institutional provider numbers (for example, UPIN, PIN, NPI). Each observation in this file is at the claim level.

Durable Medical Equipment claim file: The Durable Medical Equipment (DME) claim file contains final action claims data submitted by Durable Medical Equipment suppliers. Some of the information contained in this file includes diagnosis, (ICD–9 diagnosis), services provided (Healthcare Common Procedure Coding System (HCPCS) codes), dates of service, reimbursement amount, and DME provider number. Each observation in this file is at the claim level.

The Part D database includes the following file:

Drug Event Database: The drug event database includes the following: encrypted beneficiary identifier, date of service, drug product dispensed, drug quantity, number of days supply of product, drug costs, beneficiary and other payer cost-sharing, formulary tier and utilization management, Part D benefit phase, encrypted pharmacy identifier, encrypted prescriber identifier, and encrypted plan identifier.

We plan to provide identical standard data extracts to all qualified entities, that is, all extracts would include the same data elements and the same record layout. CMS does not plan to provide any customized data files to qualified entities under section 1874(e) of the Act. It would be the responsibility of the qualified entities to create customized analytical files and databases to support their calculation of performance measures for providers of services and suppliers.

We seek comment on whether qualified entities would require any technical assistance to aid in understanding and working with Medicare data, what type of technical assistance would be beneficial, and whether we should include technical assistance in the fee charged for the data (see Section II.C.3. below). We plan to encourage the development of a voluntary knowledge sharing mechanism for qualified entities to communicate with each other regarding best practices for calculating measures, designing reports, and other important elements of this program. We seek comments on whether technical assistance is needed and how such a voluntary knowledge sharing mechanism would best be designed and operated.

1. Number of Years of Data

Section 1874(e)(3) of the Act requires the Secretary to provide standardized extracts to qualified entities containing data from specific time periods. CMS is proposing to provide qualified entities with the most recent three years of Medicare data available at the time the qualified entity is approved for participation in the program. For example, if a qualified entity applies and is approved for participation in 2012, data for calendar years 2008, 2009, and 2010 would be provided since they would be the most recent final action claims data available. Thereafter, CMS proposes to provide qualified entities with the most recent additional year of data on a yearly basis.

2. Geographic Areas

Section 1874(e)(3) of the Act requires the Secretary to provide standardized extracts to qualified entities containing data for specific geographic areas. CMS is proposing that qualified entities receive standardized data extracts for a single geographic area or multiple regions. We propose to limit the provision of Medicare data to the geographic spread of the qualified entity's other claims data. For example, if a qualified entity has a sufficient amount of claims data from other sources (as determined by CMS during the application process) for people in Maryland, CMS would provide Medicare data for the state of Maryland.

During the September 20, 2010 public listening session for section 10332 of the Affordable Care Act, CMS received suggestions to release nationwide Medicare claims if the data are necessary for qualified entities to evaluate the performance of the providers of services and suppliers at a national level. In this proposed rule, we are requesting comments as to whether CMS should provide an option for the release of nationwide Medicare data. We specifically welcome comments regarding how the qualified entities would obtain a sufficient amount of non-Medicare nationwide claims data to include in the evaluation of providers of services and suppliers and how the qualified entities would implement and manage a nationwide provider of services and suppliers confidential review and appeal process.

3. Cost To Obtain the Data

Section 1874(e)(4)(A) of the Act requires qualified entities to pay a fee for obtaining the data that is equal to the cost of making such data available. We interpret the cost of making the data available broadly, to include the cost of providing the technical assistance (described above), the cost of processing qualified entities' applications, and the costs of monitoring qualified entities to ensure appropriate use of the data and appropriate adherence to data privacy and security standards. This monitoring may include, but is not limited to, periodic requests for documentation relating to privacy and security policies and procedures. The data fees would vary in accordance with the amount of data requested by the qualified entities. CMS would provide each prospective qualified entity with the actual cost of obtaining the data they request, and post on the CMS Web site examples of data requests and what each costs. However, based on our past experience providing Medicare data to research entities, we estimate that the approximate costs to provide three years of data for 2.5 million beneficiaries to a qualified entity would be $200,000. Approximately $75,000 of the $200,000 is the cost of the claims data, while $125,000 is the cost of making the data available including the cost of processing applications and data requests, providing technical assistance, and monitoring. Therefore, to provide a qualified entity with three years of data for 5.0 million beneficiaries, the approximate costs would be $275,000 ($150,000 for the data and $125,000 for the program costs).

Qualified entities would be expected to pay the fee annually. However, after the first year, costs would be lower since qualified entities would only be receiving one year of Medicare claims data. We solicit comment on the prospective fee amount and the ability of prospective applicants to pay it.

We note that the creation and dissemination of nationwide extracts of Medicare data (mentioned above) would significantly increase the cost to any qualified entity seeking such nationwide data of obtaining and processing Medicare data. As stated above, we seek comment on the likelihood of a qualified entity having sufficient other claims data to meet the requirements to receive a nationwide extract of Medicare data.

D. Data Security and Privacy

This provision creates a new program that provides for the release of Medicare beneficiary level data to private entities that are not enrolled in Medicare. We recognize that many approved qualified entities would be organizations with many years of experience in using claims data to produce performance reports on providers of services and suppliers, and, as such, may have existing agreements with private health plans who provide them data regarding the data security and privacy standards they must observe. While CMS is committed to ensuring the success of qualified entities in combining Medicare data with claims data from other sources to create comprehensive performance reports for providers of services and suppliers, CMS is also committed to ensuring that the beneficiary level data provided to qualified entities is subject to stringent security and privacy standards throughout all phases of the performance measure calculation, confidential reporting, appeal, and public reporting processes.

In addition to the statutory requirements contained in section 1874(e)(4) of the Act, qualified entities must meet any requirements that are adopted by the Secretary under section 1874(e)(2)(B) of the Act, which provides for the adoption of "such other requirements as the Secretary may specify." In accordance with the explicit language of the statute, such "other requirements" may include security requirements for the data. Furthermore, section 1874(e)(3) of the Act requires the Secretary to take such actions as deemed necessary to protect the identity of individuals entitled to or enrolled in Medicare Parts A, B or D. As such, the Secretary is authorized to impose privacy and security requirements on qualified entities as a condition of participating in this program.

We have considered whether qualified entities would require beneficiary identifiable data to calculate measures. As defined at § 401.702(f) we interpret beneficiary identifiable data to mean data that permits a qualified entity to determine the name, or name and other direct identifying factors (for example, race, sex, age, address) of an individual beneficiary. If one approaches this issue purely from the point of view of the ability of qualified entities to engage in measure calculation and reporting, beneficiary identifiable data is not required. Qualified entities would be able to engage in measure calculation and reporting with files containing an encrypted beneficiary identifier. For this reason, we propose to include in any data files provided to qualified entities an encrypted beneficiary identifier that would permit linking of claims for the same beneficiary across multiple files and multiple years without identifying individual beneficiaries.

While we realize that the statute permits providers of services and suppliers to request of qualified entities the Medicare claims data underlying their measure results, we anticipate that it would be difficult for providers of services and suppliers to identify errors in measurement in the absence of patient names. For example, a report from a qualified entity might indicate to a provider that only 50 percent of their assigned diabetic patients received recommended Hba1c tests in a given year. In the absence of patient names, we believe that it would be difficult for the provider to tell whether there were errors in how the measure result was calculated. Specifically, a provider may feel that there is an error in the underlying claims data that has inappropriately lowered their measure result. This could happen for a number of reasons. The provider may have conducted a Hba1c test but for some reason may not have submitted that

claim for payment, or may have submitted the claim for payment and it does not appear in the claims data provided to qualified entities due to an error. Additionally, a claims-based quality measure may not have fully captured the exclusion criteria that apply to many quality measures. For example, a qualified entity may, using available claims data, conclude that a provider has not provided a mammogram to an eligible patient. However, the patient may have undergone mastectomy surgery in previous years and therefore no longer be eligible for inclusion in the denominator for the breast cancer screening measure.

For these reasons we believe that if a provider has a list of patient names associated with a measure result, it gives them the ability to cross reference the patient name against medical records in an effort to assess if there is missing clinical information that could be shared with the qualified entity in order to improve the accuracy of their results.

As a result, we believe that on balance, it may be appropriate to provide qualified entities with the beneficiary names if it is requested as described below, in order to enable adequate review opportunities for providers of services and suppliers and to promote increased provider acceptance of, and trust in claims-based quality measures.

While we believe that these contemplated disclosures are important to the success of the program, we also recognize the importance of protecting beneficiary data. In 2008, we published a regulation to permit Part D drug event data to be used for program monitoring, research, public health, care coordination, quality improvement, population of personal health records, and other purposes. See 73 FR 30664. As discussed in the regulation, we sought to balance access to the data with protections for beneficiary privacy and commercially-sensitive plan data to safeguard public health and permit broader public knowledge about the operations of the Part D program. Under the qualified entity program, release of Part D data is needed for provider performance evaluation, and provider performance evaluation is necessary for care coordination and quality improvement. We intend to ensure that Part D data released by CMS under this program complies with the requirements in the Part D data regulation, and that qualified entities take the necessary steps to ensure that any prescription drug data released to providers of services and suppliers as part of the review, appeal, and error corrections process is also safeguarded to ensure privacy and security of beneficiary information.

Additionally, as discussed further in II.D.2. below, we believe that the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security rules would also provide a degree of protection for this information, especially when it is in the hands of providers of services and suppliers. CMS is committed to protecting the privacy and security of beneficiary identifiable data provided to qualified entities whether they are subject to HIPAA or not. Such data are carefully protected by a number of laws and policies, including HIPAA, when it is in the hands of CMS or one of its contractors. While qualified entities would not legally be a contractor of CMS and therefore would not be subject to these laws and policies, we believe that these protections should not cease merely because CMS is making these data available to another entity for other purposes that are perceived to have a public benefit.

As described below, we propose to require qualified entities to apply privacy and security protections similar to those we require when we make beneficiary claims data available to external organizations for research purposes. To ensure that qualified entities apply appropriate privacy and security protections, we are proposing that approved qualified entities be required to execute a Data Use Agreement (DUA), described below, before receipt of any CMS data (the DUA is available at *http://www.cms.gov/cmsforms/downloads/cms-r-0235.pdf*). We note that this DUA contains significant penalties for inappropriate disclosures of the data, including both civil monetary penalties and criminal penalties. We seek comment on our proposal to apply privacy and security protections to qualified entities that are similar to those we require when we make beneficiary claims data available to external organizations for research purposes.

As described above, we do not propose to send the data in a fully identifiable format when we send it to the qualified entity. All of the Medicare claims data provided to qualified entities would be furnished in a data set that contains a unique encrypted beneficiary identification number which would enable the qualified entities to link all claims for an individual beneficiary without knowing the identity (that is, name and other identifying characteristics) of the beneficiary.

We are considering three potential options for sharing beneficiary names with qualified entities, and by extension, providers of services and suppliers. Under the first option, qualified entities would be provided with a crosswalk file linking all encrypted beneficiary identifiers to the patients' names for their Medicare data. We realize that this makes a large amount of data identifiable by the qualified entity. However, qualified entities would be permitted to give to a provider of services or supplier only the names of those beneficiaries included in that requester's performance report. Further, the qualified entity would only be permitted to provide the claims relevant to the particular measure or measure result that the provider of services or supplier is appealing, as is discussed in more detail below at section II.D.2.

Under the second option, CMS would only provide beneficiary names to qualified entities on a transactional basis for the purposes of responding to specific requests for data by providers of services and suppliers. Each request for beneficiary names would be addressed on a case-by-case basis through the forwarding of each data request by the qualified entity to CMS. The qualified entity would receive beneficiary names only for those claims that were included in the requester's report and would be expected to destroy the identifiable data after responding to the providers' request for this data. We believe that this approach better safeguards any potential threats to beneficiary privacy.

Under the third option, a provider of services or supplier who wishes to receive beneficiary names would request the encrypted claims data from the qualified entity as permitted under the statute. The provider of services or supplier would then submit a request to CMS for the beneficiary names for those specific claims.

We believe that all three approaches have pros and cons. The first option is the least resource intensive from the perspective of both CMS and qualified entities. However, this option creates legitimate privacy concerns because it results in more data becoming identifiable to the qualified entity than is necessary to respond to the requests of specific providers of services or suppliers request for beneficiary names. The second option would be potentially more resource intensive for both CMS and qualified entities, but we believe it addresses many of the concerns posed by the first option because it would result in beneficiary names being made available only on an as-needed basis. The third option would also be

potentially more resource intensive for CMS and more resource intensive for providers of services and suppliers because providers of services and suppliers would have to engage in a two-step process involving both a qualified entity and CMS to obtain the requested data. We believe this may disrupt the relationship between the qualified entity and the provider of services or supplier, which is important for error correction and confidence in measure results.

Having considered these things, we propose the second option because we believe it represents the best compromise between adequately safeguarding beneficiary privacy and fostering strong and productive relationships between qualified entities and providers of services and suppliers. If a qualified entity receives a request for data from a provider of services or supplier, we propose that the qualified entity would be required to submit a request to CMS in writing with a signed provider of services or supplier request appended as an attachment. However, we seek comment on all three options, as well as suggestions for other approaches not proposed here.

1. Privacy and Security Requirements for Qualified Entities

We are proposing to require that qualified entities have in place security protections for all data released by CMS, and any derivative files, including any Medicare claims data and any beneficiary identifiable data. As part of their applications, qualified entities would have to explain how they would ensure that only the minimum necessary beneficiary identifiable data would be disclosed to the provider of services or supplier in the event of a request by a provider of services or supplier, and how data would be securely transmitted to the provider.

In fulfilling these requirements, we are proposing at § 401.703(a)(1)(viii), that in order to be eligible to apply to receive Medicare data as a qualified entity, the applicant must demonstrate its capabilities to establish, maintain, and monitor a rigorous data privacy and security program, including ensuring compliance with plans related to the privacy and security of data. Additionally, § 401.703(a)(3) requires the applicant to submit to CMS a description of its rigorous data privacy and security policies including enforcement mechanisms.

As noted above, we intend to provide a DUA to potential qualified entities at the time of their application. This DUA would be CMS' current standard data use agreement for research disclosures (available at *http://www.cms.gov/cmsforms/downloads/cms-r-0235.pdf*), but would be customized for the purposes of the qualified entity program through addenda to paragraph 12, which allows CMS to add attachments to the DUA to address the specific needs of the data recipient. We seek comment on the current DUA and any modifications that might be necessary for the purposes of providing data to qualified entities.

Specifically, the current DUA requires a level and scope of security that is not less than the level and scope of security requirements established by the Office of Management and Budget (OMB) in OMB Circular No. A–130, Appendix III—Security of Federal Automated Information Systems (*http://www.whitehouse.gov/omb/circulars/a130/a130.html*) as well as Federal Information Processing Standard 200 entitled "Minimum Security Requirements for Federal Information Systems" (*http://csrc.nist.gov/publications/fips/fips200/FIPS–200-final-march.pdf*); and Special Publication 800–53 "Recommended Security Controls for Federal Information Systems" (*http://csrc.nist.gov/publications/nistpubs/800–53–Rev2/sp800–53-rev2-final.pdf*).

We propose prohibiting the use of unsecured telecommunications to transmit beneficiary identifiable data or deducible information derived from any CMS data file(s).

Further, we propose to require qualified entities to disclose as part of their data privacy and security policies the circumstances under which data provided by CMS would be stored and/or transmitted.

We propose to require compliance with the listed OMB and NIST requirements in all of the qualified entities' activities with CMS data received through the qualified entity program, including but not limited to the receipt, storage, and possession of these data for purposes of calculating and reporting performance measures, beginning with the qualified entities' receipt of encrypted file(s) from CMS.

We propose to require qualified entities to ensure that they bind any contractors or subcontractors that are working on behalf of the qualified entities to these same limitations and requirements. We propose that, if approved, qualified entities would have to attest that they have extended and applied CMS' security requirements to their contractors before receiving CMS data. We solicit comments on our proposals.

In order to meet the requirements in § 401.707 to establish, maintain, and monitor a security and privacy program, and to assure data are kept private and secure, we propose to require qualified entities to maintain their privacy and security programs throughout the duration of their participation as qualified entities, and through their winding down of business as a qualified entity, including the return or destruction of CMS data and any and all derivative files. Failure to comply with these requirements would result in a qualified entity being disqualified from further participation in the program. We propose to require the return or destruction of all CMS data files and derivative files in the possession of the qualified entity or its contractors and subcontractors within 30 days of any disqualification from the program or voluntary withdrawal from the program.

Finally, we are seeking public comment on the appropriateness of accepting some form of independent accreditation or certification of compliance with data privacy and security requirements from qualified entities, and what that accreditation or certification might entail. The accreditation or certification would need to be at a level and scope of security that is not less than the level and scope of security requirements described above.

2. Privacy and Security of Data Released to Providers of Services and Suppliers

We have also considered how to ensure the security and privacy of the beneficiary identifiable data after it has been placed in the hands of a provider of services or supplier during the report review and error correction process. We believe that the HIPAA Privacy and Security rules would apply to a majority of providers of services and suppliers who would receive beneficiary identifiable data from qualified entities. We base this belief on CMS' claims processing experience. Due to the statutory requirement that Medicare claims be filed electronically, the electronic claim filing rates are very high. However, there are exceptions to electronic filing. For example, certain small providers are exempt. For institutional claim billers (for example, hospitals, SNFs, HHAs) the rate of providers filing electronically is approximately 99.9 percent, and for non-institutional claims (for example, physicians, other practitioners, labs, ambulance) the rate is 98.2 percent.

By law, providers that transmit any beneficiary identifiable health information in the context of an electronic transaction for which there is a HIPAA standard transaction are HIPAA covered entities that are subject

to the HIPAA Security and Privacy rules. Providers of services and suppliers that are already subject to the HIPAA Privacy and Security rules are required to have policies and procedures in place to protect the privacy and security of beneficiary identifiable data. We believe that the HIPAA Privacy and Security rules provide an appropriate level of protection of beneficiary identifiable data received by a provider of services or supplier from a qualified entity as the result of an appeal process or error correction request.

However, qualified entities may generate performance reports for providers of services and suppliers not subject to HIPAA. For those few providers that are not subject to HIPAA because they do not transmit beneficiary identifiable health information in the context of an electronic transaction for which there is a HIPAA standard transaction, we propose to require that qualified entities include a plan in their application materials for assuring protection of the data that is released as a part of the measure report review process, such as requiring a signed privacy and security agreement between the qualified entity and the provider of services or supplier that includes the same privacy and security protections as the qualified entity is subject to under the DUA it enters into with CMS. We believe that the few providers this affects would be willing to enter into such agreements, and that this would ensure that beneficiary level data that is given to a provider of services or supplier through an appeals process would remain secure and protected, and only used for purposes related to the appeal. We seek comments on these proposals.

Section 1874(e)(4)(B)(v) of the Act requires qualified entities to make the Medicare claims data they receive available to providers of services and suppliers. We believe that for many providers of services and suppliers, the beneficiary name may be of more practical use in determining the accuracy of the measures results than the underlying claims used to calculate the measures. However, the statute does explicitly acknowledge that upon request qualified entities would need to share with providers of services or suppliers "data made available under this subsection." We would like to make it clear that we do not interpret this provision to mean that providers could receive all Medicare claims data for a given patient or patients. Rather, we interpret this to mean that in certain circumstances, qualified entities may have to provide all the claims relevant to the particular measure or measure results the provider of services or supplier is appealing. Therefore, a provider requesting claims data in relation to a diabetes quality measure would only receive the claims related to the calculation of that quality measure. We realize this may result in providers of services or suppliers receiving claims submitted by another provider. For example, the provider that performs a test on a patient may not be the provider who is ultimately determined by the qualified entity to be responsible for the care of that patient. Therefore, if the responsible provider requests access to the underlying claims data informing their measure results, some of that claims data may be from other providers. We solicit comment on any privacy or security issues related to this situation.

We also believe that the intent of this program is not just for qualified entities to engage in measure calculation and reporting to providers, but for the reports generated by qualified entities to result in meaningful quality improvement activities by providers. As a result, we believe that it is appropriate for providers of services and suppliers to use the claims data and beneficiary name received as part of an appeal to engage in quality improvement activities as long as the quality improvement work is in accordance with the HIPAA limitations discussed herein.

3. Beneficiary Privacy and Security Concerns

Following provision of the performance reports on a confidential basis to providers of services or suppliers, qualified entities are required to make performance information public. We note that the publication is only of aggregated, non-beneficiary identifiable data that would not be able to be reidentifed (for example, a provider conducted an annual HbA1C test for 70 percent of their diabetic patients). We propose to require that qualified entities ensure that all publicly available reports do not contain beneficiary identifiable information. Additionally, we propose to prohibit qualified entities from disclosing information in their publicly available reports that there is a reasonable basis to believe can be used in combination with other publicly available information to re-identify individual patients. We expect that this reporting of aggregate non-identifiable data should not compromise beneficiary privacy.

We also propose requiring qualified entities to have in place a process to respond to beneficiary queries or complaints regarding the privacy and security of their data. In addition, we propose to require qualified entities to inform beneficiaries of a breach pursuant to the requirements in paragraph 13 of the DUA. Finally, we propose below at section F of the preamble that qualified entities submit information on privacy or security breaches to CMS, to allow CMS to monitor qualified entity actions in this area. We seek comments on these proposals.

E. Confidential Opportunities to Review, Appeal, and Correct Reports

The statute describes two requirements to ensure that providers of services and suppliers are afforded an opportunity to provide input on the reporting of their performance metrics. Section 1874(e)(4)(C)(ii) of the Act requires qualified entities to make their reports available confidentially to providers of services and suppliers identified in the reports prior to the public release of such reports, and to offer them the opportunity to appeal and correct errors. Additionally, section 1874(e)(4)(B)(v) of the Act requires qualified entities to release relevant Medicare claims data that was made available to them under section 1874 of the Act to providers of services and suppliers who request it. We interpret this section of the Act to indicate that qualified entities must provide relevant data made available to them under this subsection to any provider of services or supplier identified in the qualified entity's report who requests such data. By relevant data, we mean the underlying claims data used to calculate the results for any measure that a provider wishes to appeal. We assume that the reason providers of services and suppliers would make requests for data is so they can appeal and request the correction of errors in their reports.

To ensure that qualified entities have a method to address these two requirements, we propose, at § 401.704(b), to require that applicants include a plan for their process for confidential report review, appeals, and error correction processes in their application materials.

We are proposing that these plans would contain several elements. First, a qualified entity would need to provide for a means of informing providers of services and suppliers of the specific steps that were taken in order to generate their performance reports in order for providers of services and suppliers to be able to understand their performance reports. We propose requiring that this plan include an

explanation of the measurement methodology, estimates of statistical reliability, and information on how to interpret the results to help providers of services and suppliers understand their performance relative to others. To the greatest extent possible, these explanations and information should be written using a language and formats that are as easily understood as possible. As discussed below, the qualified entity would also be required to have a plan for informing providers of services or suppliers about their rights to request data, appeal the reports, and request error correction.

Second, the qualified entity would be required to describe the means by which providers of services and suppliers may request the Medicare data that was used to calculate the performance measures they wish to appeal and, if necessary, correct. The qualified entities would be required to describe how they would ensure that the information that is shared would be limited to those beneficiaries included in the requestor's performance report and only contains those claims relevant to the particular measure(s) being appealed.

Third, as discussed above in this section, we are proposing to require that qualified entities describe their means of confidentially sharing results with providers of services and suppliers (for example secure Web site or e-mail) in their application. Qualified entities would be required to use secure methods suitable for transmitting or otherwise providing secure access to identifiable health information to providers of services or suppliers. We seek comment on the appropriate secure methods that should be required for sharing the information with providers of services or suppliers, such as two factor authentication.

Fourth, we propose to require a description of the means by which providers of services and suppliers can submit appeals for error correction. This process must describe the timeframes for providers of services or suppliers to submit requests for data and requests for error correction. The timeframes must meet several parameters. We believe these timeframes are reasonable because they balance the need for careful review by providers of services and suppliers with one of the main intents of the program, which is to make performance information available to the public. Qualified entities must share measures, measurement methodology, and measure results with providers of services and suppliers at least 30 business days prior to making measure results public. Additionally, qualified entities must allow providers of services and suppliers at least 10 business days to make a request for data, and an additional 10 business days for a provider to request an error correction. Per the qualified entity's request, the provider of services or supplier may be required to provide comments, additional data, or documentation for consideration.

Fifth, the qualified entity must make clear to providers of services and suppliers that reports would be made public after a specified date (at a minimum 30 business days after sharing measure results with providers of services and suppliers), regardless of the status of any providers of services or suppliers' requests for error correction. We propose to encourage qualified entities to dedicate appropriate resources, including qualified staff, to resolving good faith questions regarding performance results to both parties' satisfaction whenever possible. If the request for a data or error correction is still outstanding at the time of making the reports public, we propose the qualified entity must, if feasible, post publicly the name of the appealing provider and a description of the appeal request. While we understand that this proposal means that some provider of services and supplier requests for error correction might not be resolved prior to publication of the results, we have included this requirement to ensure that providers do not make spurious requests for error correction to prevent the publication of measure results. We want to ensure that providers of services and suppliers have the opportunity to correct their results in situations where there are errors, but also ensure that performance results are released in a timely manner.

CMS proposes to monitor the number of provider appeals for each qualified entity, both as a mechanism for ensuring the overall quality of individual qualified entity reporting mechanisms and to identify any situations where providers of services or suppliers might be appealing on spurious grounds so that CMS can determine whether to further investigate any such situations.

Finally, qualified entities must describe the means by which they would notify the provider of services or supplier of the outcome of the request for error correction and basis for the decision.

We request comments on our proposed approach to requiring potential qualified entities to describe their processes for providers of services and suppliers to review reports confidentially, request data, and appeal to the qualified entity for error correction in their applications.

Additionally, although we do not have the statutory authority to require it, we strongly encourage qualified entities to share not only Medicare data but also their claims data from other sources with providers of services and suppliers, if they ask to correct an error or appeal their results on specific measures.

F. Monitoring, Oversight, Sanctioning, and Termination

CMS is committed to ensuring the successful implementation of this program, maximizing the appropriate use of Medicare data for the production of performance reports, while minimizing the risk of inappropriate disclosure of beneficiary information. Section 1874(e)(2)(B) of the Act authorizes CMS to require qualified entities to meet any other requirements we specify, "such as ensuring the security of data." We have outlined a range of requirements in this rule that qualified entities would be expected to meet and maintain on an ongoing basis. In order to ensure that the highest standards are adhered to by all qualified entities, we are proposing a monitoring program which would assess qualified entities' compliance with the requirements laid out in this rule and assess sanctions or termination as deemed appropriate by CMS. We are proposing at § 401.710(a)(1) that CMS, or one of its designated contractors, would periodically audit qualified entities use of Medicare data for the production of performance reports on providers of services or suppliers to ensure that the Medicare data is being used only for its intended purpose, that is, in combination with claims data from other sources to calculate and report either standard or alternative claims-based measures to providers of services and suppliers. We propose that these audits be done at the discretion of CMS.

We also propose that CMS would monitor the amount of claims data from other sources being used in the production of performance reports to ensure that it is equal to or greater than the amount promised by the qualified entity in its application. This would require production of documentation on data sources and quantities of data, and may necessitate a site visit to the qualified entity by data experts. Again, if CMS finds that qualified entities are not, in fact, calculating performance reports using the amount and type of data specified in its initial application that would also be grounds for sanction or termination.

We recognize that in certain circumstances the amount of claims data from other sources a qualified

entity has access to may decrease. For example, a qualified entity may lose access to a data set in the second year of their participation in the program or may discover that some of the other claims data they possess is inaccurate and therefore unusable. In these cases, we propose that the qualified entity must immediately inform CMS of the reduction in the amount of other claims data it possesses and provide documentation that the remaining other claims data is still sufficient to address the concerns regarding sample size and reliability expressed by stakeholders regarding the calculation of performance measures from a single payer source. We would review this information and determine whether the qualified entity may continue to participate in the program. If CMS determines the amount of data is not sufficient to meet the requirements, the qualified entity would have 60 days to acquire new claims data and submit documentation to CMS. Under no circumstances may a qualified entity issue a report, use a measure, or share a report during this 60 day period. If after the 60 days, the qualified entity does not have access to new data or if CMS decides the qualified entity still does not possess an adequate amount of additional claims data, CMS would terminate its relationship with the qualified entity. We solicit comments on our proposal for regarding the CMS response to a decrease in the amount of claims data possessed by a qualified entity.

We propose requiring qualified entities to submit an annual report to CMS covering two topics, as described in further detail below: (1) General program adherence and (2) engagement of providers of services and suppliers.

1. General Program Adherence: To monitor general program adherence, we propose that qualified entities would submit an annual report containing the number of Medicare and other claims combined, the percent of the overall market share the number of claims represents in the qualified entity's area, the number of measures calculated, the number of providers of services and suppliers profiled by type of provider and supplier, and a measure of the public use of the reports (for example, the number of Web site hits).

2. Engagement of Providers of Services and Suppliers: We believe that one of the most important outcomes of this program would be the engagement of providers of services and suppliers with qualified entities to improve health care quality and efficiency. We want to ensure that qualified entities engage providers of services and suppliers in a constructive and respectful manner, and diligently work to address the concerns of the providers of services or suppliers throughout any appeal and error correction processes. Therefore, we are also proposing to impose reporting requirements so that CMS would be able to monitor the requests from providers of services and suppliers for information, error correction, and appeals, as well as the responsiveness of the qualified entity to those requests. In order to permit CMS to monitor these requests, we propose that qualified entities would provide a yearly report to CMS regarding: (1) The number of requests for data and the number of requests fulfilled; (2) the number of subsequent error corrections; (3) the type of problem(s) leading to the appeal or request for error correction; (4) the time for the qualified entity to acknowledge the request for data or error correction; (5) the time for the qualified entity to respond to the request for appeal or error correction; and (6) the number of requests for appeal or error correction that are resolved.

As stated above, CMS is committed to ensuring that qualified entities protect the privacy and security of beneficiary information. To monitor qualified entities actions in this area, we are proposing that qualified entities would submit to CMS information regarding any inappropriate disclosures or uses of beneficiary identifiable data pursuant to the requirements in the DUA. We solicit comment on our proposal as well as other indicators that would demonstrate that a qualified entity is appropriately responding to the requests from providers of services or suppliers.

If, based upon the monitoring activities described above or by any other manner, we conclude that a qualified entity is not adequately observing the requirements of the program we propose that CMS, in its sole discretion, may take any or all of the following actions:

- Provide a warning notice, which indicates that future deficiencies could lead to termination, to the qualified entity of the specific performance concern;
- Request a corrective action plan (CAP) from the qualified entity;
- Place the qualified entity on a special monitoring plan;
- Terminate the qualified entity.

The level of sanctions and/or termination would depend on an assessment by CMS of the seriousness of the observed deficiency or deficiencies by the qualified entity. One or more disclosures of beneficiary identifiable information would likely to result in termination. Additionally, since the statute explicitly bars the reuse of Medicare claims for purposes other than generating performance reports, we propose CMS terminate its relationship with the qualified entity in the event of reuse of Medicare claims. Other deficiencies that may be the result of employee error and can be easily corrected in the future would likely just result in a warning notice. However, as noted above, any time the qualified entity is terminated we propose to require the destruction or return of any Medicare data within 30 days.

G. Qualified Entity Application Content

In accordance with these proposals, if finalized, CMS proposes to develop an application process for potential qualified entities that would require the following information:

1. Applicant name and entity description.
2. A description of the applicant's organizational and governance qualifications as laid out in Section II.A.2. above and at § 401.703(a)(1).
3. A description of the business model the applicant plans to use for covering the costs of the required functions.
4. A description of the additional claims data the applicant would use in combination with the requested Medicare data, and the amount of data that would be combined with Medicare data.
5. A description of geographic area(s) for which Medicare data would be requested.
6. Documentation of its proposed data privacy and security policies and enforcement mechanisms.
7. A description of the proposed measures it intends to calculate and report, including the name of the measure, the name of the measure developer, the measure specifications, the rationale for selecting those measures including the relationship of the measures to existing measurement efforts and the relevancy to the proposed population in the proposed geographic area, and a description of the methodologies it intends to use in creating reports; if seeking approval of an alternative measure, documentation that the proposed alternative measure has been accepted by the Secretary as an alternative measure through notice and comment rulemaking.
8. A description of the process it would establish to allow providers of services and suppliers to review draft reports confidentially, request data and appeal to correct errors before the reports are made public.
9. A prototype report for reporting findings to providers of services and suppliers, and if different, to consumers,

including any standard explanatory language (narrative), an easily comprehensible description of the proposed measures, the rationale for use of those measures, a description of the methodologies to be used, and a description of the data specifications and limitations, as well as a dissemination plan for reports.

We propose to assess the veracity of each applicant's assertions through a comprehensive review of their supporting documentation as part of the application review process.

Applications would generally be approved based on the overall expertise and sustained experience demonstrated. We are not proposing to limit the number of qualified entities or review the applications against one another. We believe our proposed approach to determining qualified entity eligibility balances the need to ensure fairness in qualified entities' evaluation of providers of services and suppliers with beneficiaries' needs for confidentiality of their health care information. We seek comments on our proposed application requirements and the total burden associated with them.

We recognize that by not limiting the number of qualified entities in any particular geographic region, in certain circumstances providers of services and suppliers might receive multiple reports from different qualified entities. We believe that given the requirement that qualified entities contribute claims data from other sources, the likelihood of multiple qualified entities in the same area is low. However, we seek comment on the implications of providers of services and suppliers receiving multiple reports. We also seek comment on whether CMS should limit the number of qualified entities that are approved for a particular region, as well as other methods to address this issue.

In selecting qualified entities, CMS would evaluate all applications received and identify those that meet these requirements. We propose that applications for participation in the program would be available on the CMS Web site beginning January 1, 2012. Applications would only be collected and processed once a year. We propose that applications would be due on March 31, 2012, and by the close of the first quarter of the calendar year each year thereafter. We considered, instead, using a rolling application process, where organizations could apply at any point in the year. However, we are concerned about the burden this would place on CMS in processing and reviewing applications. We seek comment on our proposed application process, specifically our decision to have a yearly application date rather than using a rolling application process.

Applicants would be approved for a period of three years from the date of notification of the application approval by CMS. In order to continue to serve as a qualified entity for any subsequent three year periods, the qualified entity would need to reapply. To reapply, a qualified entity would need to submit to CMS documentation of any changes to what was included in their original application. Qualified entities would need to submit this documentation at least 6 months before the end of their three-year approval period. If a qualified entity has submitted a reapplication, it would be able to continue to serve as qualified entities until the re-application is either approved or denied by CMS. If the re-application is denied, CMS would terminate its relationship with the qualified entity. We propose that a qualified entity would need to be in good standing in order to reapply. A qualified entity would be considered in good standing if it had no violations of the requirements of the program or if the qualified entity was addressing any past deficiencies either on its own or through the implementation of a corrective action plan.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We are soliciting public comment on each of these issues for the following sections of this proposed rule that contain information collection requirements (ICRs).

If finalized, these regulations would require an organization seeking to receive data as a qualified entity to submit an application. Specifically, an applicant must submit the information listed in proposed §§ 401.703–401.705. The burden associated with this requirement is the time and effort necessary to gather, process, and submit the required information to CMS. We estimate that 35 organizations would submit applications to receive data as qualified entities. We further estimate that it would take each applicant 500 hours to gather, process and submit the required information. The total estimated burden associated with this requirement is 500 hours at an estimated cost of $795,641.

Proposed § 401.707(a)(iv) states that as part of the application review and approval process, a qualified entity would be required to execute a Data Use Agreement (DUA) with CMS, that among other things, reaffirms the statutory bar on the use of Medicare data for purposes other than those referenced above. The burden associated with executing this DUA is currently approved under OMB control number 0938–0734.

Proposed § 401.705(f) would require qualified entities in good standing to re-apply for qualified entity status 6 months before the end of their three-year approval period. We estimate that 25 entities would be required to comply with this requirement. We estimate that it would take 120 hours to reapply to CMS. The total estimated burden associated with this requirement is 120 hours at an estimated cost of $136,396.

Proposed § 410.710(b) requires qualified entities to submit annual reports to CMS as part of CMS' ongoing monitoring of qualified entity activities. We estimate that the 25 entities in the program will be required to comply with this requirement. We estimate that it will take 150 hours to complete an annual monitoring report. The total estimated burden associated with this requirement is 150 hours at $170,475.

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING AND REPORTING BURDEN

Regulation section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Hourly labor cost of reporting ($)	Total labor cost of reporting ($)*	Total capital/maintenance costs ($)	Total cost ($)
§ 401.703(a)	0938–New	35	35	500	17,500	**	795,641	0	795,641
§ 401.705(f)	0938–New	25	25	120	3,000	**	136,396	0	136,396
§ 401.710(b)	0938–New	25	25	150	3,750	**	170,475	0	170,475
Total		35	35		24,250				1,102,512

*Total labor cost assuming 92% of total hours are professional and technical and 8% are legal.
**Wage rates vary by level of staff involved in complying with the information collection request (ICR).

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–5059–P], Fax: (202) 395 6974; or E-mail: *OIRA_submission@omb.eop.gov.*

IV. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). For the reasons discussed below, we estimate that the total impact of this proposed rule would be less than $90 million and therefore, it would not reach the threshold for economically significant effects and is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, we estimate that most hospitals and most other providers are small entities as that term is used in the RFA (including small businesses, nonprofit organizations, and small governmental jurisdictions). However, since the total estimated impact of this rule is less than $100 million, and the total estimated impact would be spread over both qualified entities and providers of services and suppliers, no one entity would face significant impact. Thus, we are not preparing an analysis of options for regulatory relief of small businesses because we have determined that this rule would not have a significant economic impact on a substantial number of small entities.

We estimate that two types of entities may be affected by the program established by section 1874(e) of the Act: Organizations that desire to operate as qualified entities and the providers of services and suppliers who receive performance reports from qualified entities.

We anticipate that most providers of services and suppliers receiving qualified entities' performance reports would be hospitals and physicians. Many hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the Small Business Administration definition of a small business (having revenues of less than $34.5 million in any 1 year) (for details see the Small Business Administration's Web site at *http://sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf* (refer to the 620000 series). For purposes of the RFA, physicians are considered small businesses if they generate revenues of $10 million or less based on Small Business Administration size standards. Approximately 95 percent of physicians are considered to be small entities.

The analysis and discussion provided in this section and elsewhere in this proposed rule complies with the RFA requirements. Because we acknowledge that many of the affected entities are small entities, the analysis discussed throughout the preamble of this proposed rule constitutes our regulatory flexibility analysis for the remaining provisions and addresses comments received on these issues.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Any such regulatory impact analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. We do not believe this proposed rule has impact on significant operations of a substantial number of small rural hospitals because we anticipate that most qualified entities would focus their performance evaluation efforts on metropolitan areas where the majority of health services are provided. As a result, this rule would not have a significant impact on small rural hospitals. Therefore, the Secretary has determined that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This proposed rule would not mandate any requirements for State,

local, or tribal governments in the aggregate, or by the private sector, of $136 million. Specifically, as explained below we anticipate the total impact of this rule on all parties to be approximately $87 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this proposed rule in accordance with Executive Order 13132 and have determined that this regulation would not have any substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

B. Anticipated Effects

1. Impact on Qualified Entities

Because section 1874(e) of the Act establishes a new program, there is little quantitative information available to inform our estimates. However, we believe that many or most qualified entities are likely to resemble community quality collaborative programs such as participants in the CMS Better Quality Information for Medicare Beneficiaries pilot (*https://www.cms.gov/BQI/*) and the AHRQ Chartered Value Exchange (CVE) program (*http://www.ahrq.gov/qual/value/lncveover.htm*). Community quality collaboratives are community-based organizations of multiple stakeholders that work together to transform health care at the local level by promoting quality and efficiency of care, and by measuring and publishing quality information. Consequently, we have examined available information related to those programs to inform our assumptions, although there is only limited available data that is directly applicable to this analysis.

We estimate that 35 organizations would submit applications to participate as qualified entities. We anticipate that the majority of applicants would be nonprofit organizations such as existing community collaboratives. In estimating qualified entity impacts, we used hourly labor costs in several labor categories reported by the Bureau of Labor Statistics (BLS) at *http://data.bls.gov/pdq/querytool.jsp?survey=ce.* We used the annual rates for 2009 and added 33 percent for overhead and fringe benefit costs. These rates are displayed in Table 2.

TABLE 2—LABOR RATES FOR QUALIFIED ENTITY IMPACT ESTIMATES

	2009 hourly wage rate (BLS)	OH and fringe (33%)	Total hourly costs
Professional and technical services	$34.08	$11.25	$45.33
Legal review	35.35	11.67	47.02
Custom computer programming	40.37	13.32	53.69
Data processing and hosting	29.36	9.69	39.05
Other information services	30.62	10.10	40.72

We estimate that preparation of an application would require a total of 500 hours of effort, requiring a combination of staff in the professional and technical services and the legal labor categories. We seek comment on our estimate that 35 organizations would apply to become qualified entities and encourage any interested organizations to signal their intent to apply as qualified entities in their comments on this rule.

We estimate that 25 of these applicants would be approved as participating qualified entities, and that each qualified entity would request Medicare claims data accompanied by payment for these data. Because of the eligibility criteria we are proposing for qualified entities, we believe that it is likely that all of these organizations would already be performing work related to calculation of quality measures and production of performance reports for health care providers, so the impact of the program established by section 1874(e) of the Act would be an opportunity to add Medicare claims data to their existing function.

The statute directs that the fees for these data be equal to the government's cost to make the data available. We are proposing to initially provide three years of data to qualified entities with yearly updates thereafter. Based on CMS past experience providing Medicare data to research entities, we estimate that the total approximate costs to provide three years of data for 2.5 million beneficiaries to a qualified entity would be $200,000. As shown in Table 3, this would include approximately $75,000 in costs to produce the claims data, as well as approximately $125,000 in additional costs associated with technical assistance, processing applications and requests for data, and monitoring.

We estimate that, on average, each qualified entity's activity to analyze the Medicare claims data, calculate performance measures and produce provider performance reports would require 5,500 hours of effort. While qualified entities would not be able to calculate or produce alternative measures in the first year of serving as a qualified entity, they may submit measures for approval in the first year of the program, so we have also included estimates here of the level of effort required to develop and submit alternative measures. We estimate that half of the qualified entities (13) would propose alternative performance measures, which would involve an additional 2,100 hours of effort for each entity.

We further estimate that, on average, each qualified entity would expend 5,000 hours of effort processing providers' and suppliers' appeals of their performance reports and producing revised reports, and 2,000 hours making information about the performance measures publicly available. These estimates assume that, as discussed below in the section on provider and supplier impacts, on average 25 percent of providers or services and suppliers would appeal their results from a qualified entity. These assumptions are based on a belief that in the first year of the program many providers would want to appeal their results prior to performance reports being made available to the public. Responding to these appeals in an appropriate manner would require a significant investment of time on the part of qualified entities. This equates to an average of four hours per appeal for each qualified entity. We assume that the complexity of appeals would vary greatly, and as such, the time required to address them would also vary greatly. Many appeals may be able to be dealt with in an hour or less while some appeals may require multiple meetings

between the qualified entity and the affected provider of services or supplier. On average however, we believe that this is a realistic and reasonable estimate of the burden of the appeals process on qualified entities. We discuss the burden of the appeals process on providers of services and suppliers below.

We anticipate that qualified entities would expend 2,000 hours of effort developing their proposed performance report. These estimated hours are separated into labor categories in Table 3 below, with the pertinent hourly labor rates and cost totals.

Finally, we estimate that each qualified entity would spend 255 hours of effort submitting information to CMS for monitoring purposes. This would include audits and site visits as discussed above. It would also include an annual report that contains measures of general program adherence, measures of the provider of services and suppliers data sharing, error correction, and appeals process, and measures of the success of the program with consumers. Finally, qualified entities would be required to notify CMS of inappropriate disclosures or use of beneficiary identifiable data pursuant to the requirements in the DUA. We believe that many of the required data elements in both the annual report and the report generated in response to an inappropriate disclosure or use of beneficiary identifiable data would be generated as a matter of course by the qualified entities and therefore, would not require significant additional effort. Based on the assumptions we have described, we estimate the total impact on qualified entities for the first year of the program to be a cost of $49,003,203.

TABLE 3—IMPACT ON QUALIFIED ENTITIES FOR THE FIRST YEAR OF THE PROGRAM

[Impact on Qualified Entities]

Activity	Hours				Labor hourly cost	Cost per applicant	Number of applicants	Total cost impact
	Professional and technical	Legal	Computer programming	Data processing and hosting				
APPLICATION COSTS								
Preparation of application by candidate QEs								
a. Prepare draft application	360				$45.33	$16,319		
b. Legal review		40			$47.02	$1,881		
c. Revisions to draft application	60				$45.33	$2,720		
d. Senior management review and signature	40				$45.33	$1,813		
Total: application preparation	460	40				$22,733	35	$795,641
Medicare data purchase costs by approved QEs					NA	$75,000	25	$1,875,000
Additional Medicare data application costs					NA	$125,000	25	$3,125,000
Total: Applications								$5,795,641
QE OPERATIONS COSTS								
Database administration				500	$39.05		25	$488,125
Data analysis/measure calculation/report preparation			2500		$53.69	$134,225	25	$3,355,625
				2500	$39.05	$97,625	25	$2,440,625
Development and submission of alternative measures	1000				$45.33	$45,330	13	$589,290
			100		$53.69	$5,369	13	$69,797
				1000	$39.05	$39,050	13	$507,650
QE processing of provider appeals and report revision	4000				$45.33	$181,320	25	$4,533,000
		1000			$47.02	$47,020	25	$1,175,500
Development of proposed performance report formats	1000				$45.53	$45,530	25	$1,138,250
			1000		$53.69	$53,690	25	$1,342,250
Publication of performance reports			1000		$53.69	$53,690	25	$1,342,250
				1000	$39.05	$39,050	25	$976,250
Monitoring				255	$39.05	$9,958	25	$248,950

TABLE 3—IMPACT ON QUALIFIED ENTITIES FOR THE FIRST YEAR OF THE PROGRAM—Continued

[Impact on Qualified Entities]

Activity	Hours				Labor hourly cost	Cost per applicant	Number of applicants	Total cost impact
	Professional and technical	Legal	Computer programming	Data processing and hosting				
Computer hardware and processing	.....	.....	.....	.....	.....	$1,000,000	25	$25,000,000
Total: Operations	.....	.....	.....	.....	.....	.....	.....	$43,207,562
Total QE Impacts (application plus operations)	.....	.....	.....	.....	.....	.....	.....	$49,003,203

2. Impact on Health Care Providers of Services and Suppliers

Table 4 reflects the hourly labor rates used in our estimate of the impacts of the first year of section 1874(e) of the Act on health care providers of services and suppliers. We note that numerous health care payers, community quality collaboratives, States, and other organizations are producing performance measures for health care providers of services and suppliers using data from other sources, and that providers of services and suppliers are already receiving performance reports from these sources. We anticipate that the Medicare claims data would merely be added to those existing efforts to improve the statistical validity of the measure findings, and therefore the impact of including Medicare claims data in these existing performance reporting processes is likely to be marginal. However, we invite comments on the impact of this new voluntary program.

TABLE 4—LABOR RATES FOR PROVIDER AND SUPPLIER IMPACT ESTIMATES

	2009 hourly wage rate (BLS)	Overhead and fringe benefits (33%)	Total hourly costs
Physicians' offices	$30.90	$10.20	$41.10
Hospitals	26.44	8.73	35.17

We anticipate that the impacts on providers of services and suppliers consist of costs to review the performance reports generated by qualified entities and, if they choose, appeal their performance calculations. Based on a review of available information from the Better Quality Information and the Charter Value Exchange programs, we estimate that, on average, each qualified entity would distribute performance reports to 5,000 health providers of services and suppliers. We anticipate that the largest proportion of providers of services and suppliers would be physicians because they comprise the largest group of providers of services and suppliers, and are a primary focus of many recent performance evaluation efforts. Based on our review of information from these existing programs, we assume that 95 percent of the recipients of performance reports (that is, an average of 4,750 per qualified entity) would be physicians, and 5 percent (that is, an average of 250 per qualified entity) would be hospitals and other suppliers. Providers of services and suppliers receive these reports with no obligation to review them, but we assume that most would do so to verify that their calculated performance measures reflect their actual patients and health events. We estimate that, on average, each provider of services or supplier would devote five hours to reviewing these reports. We also estimate that 25 percent of the providers of services and suppliers would decide to appeal their performance calculations, and that preparing the appeal would involve an average of ten hours of effort on the part of a provider of services or supplier. As with our assumptions regarding the level of effort required by qualified entities in operating the appeals process, we believe that this average covers a range of provider efforts from providers who would need just one or two hours to clarify any questions or concerns regarding their performance reports to providers who would devote significant time and resources to the appeals process.

Using the hourly costs displayed in Table 4, the impacts on providers of services and suppliers are calculated below in Table 5. Based on the assumptions we have described, we estimate the total impact on providers for the first year of the program to be a cost of $38,262,815.

As stated above in Table 3, we estimate the total impact on qualified entities to be a cost of $49,003,203. Therefore, the total impact on qualified entities and on providers of services and suppliers for the first year of the program is estimated to be $87,266,018.

TABLE 5—IMPACT ON PROVIDERS OF SERVICES AND SUPPLIERS FOR THE FIRST YEAR OF THE PROGRAM

[Impact on Providers of Services and Suppliers]

Activity	Hours per provider		Labor hourly cost	Cost per applicant	Number of providers per QE	Number of QEs	Total cost impact
	Physician offices	Hospitals					
Provider review of performance reports	5		$41.10	$206	4,750	25	$24,403,125
		5	35.17	176	250	25	1,099,063
Preparing and submitting appeal request to QEs	10		41.10	411	1188	25	12,206,700
		10	35.17	352	63	25	533,928
Total Provider Impacts							38,262,815

C. Alternatives Considered

The statutory provisions that were added by section 10332 of the Affordable Care Act are detailed and prescriptive about the eligibility for, and requirements of the Qualified Entity Program. Consequently, we believe there are limited approaches that would ensure program success and statutory compliance. We considered proposing a less comprehensive set of eligibility criteria for qualified entities (for example, eliminating requirements that applicants demonstrate capabilities related to calculation of measures, developing performance reports, combining Medicare claims data with other claims, and data privacy and security protection). While such an approach might have reduced certain application and operating costs for these entities, we did not adopt such an approach for several reasons. An important consideration is the protection of beneficiary identifiable data. We believe if we do not require qualified entities to provide sufficient evidence of data privacy and security protection capabilities, there would be increased risks related to the protection of beneficiary identifiable data.

Additionally, we believe that requiring less stringent requirements regarding the production and reporting of measures would lead to increases in the number of provider appeals, and consequently in appeals-related costs of both providers and qualified entities. We expect that such a scenario would not support the development of a cooperative relationship between qualified entities and providers of services and suppliers. We request public comments on other approaches that could be considered.

D. Conclusion

As explained above, we estimate the total impact for the first year of the program on qualified entities and providers to be a cost of $87,266,018. Based on these estimates, we conclude this proposed rule does not reach the threshold for economically significant effects and thus is not considered a major rule.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

For the reasons set forth in the Preamble, the Centers for Medicare and Medicaid Services proposes to amend 42 CFR Chapter IV as set forth below:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation for part 401 is revised to read as follows:

Authority: Secs. 1102, 1871, and 1874(e) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395w–5).

2. A new subpart G is added to part 401 to read as follows:

Subpart G—Availability of Medicare Data for Performance Measurement

Sec.

Subpart G—Availability of Medicare Data for Performance Measurement

§ 401.701 Purpose and scope.

The regulations in this subpart implement section 1874(e) of the Social Security Act as it applies to the Centers for Medicare & Medicaid Services (CMS). The rules apply to Medicare data made available to qualified entities for the evaluation of the performance of providers of services and suppliers.

§ 401.702 Definitions.

(a) *Qualified entity.* A qualified entity is defined as a public or private entity that:

(1) Is qualified, as determined by the Secretary, to use claims data to evaluate the performance of providers of services and suppliers on measures of quality, efficiency, effectiveness, and resource use, and

(2) Agrees to meet the requirements described in Section 1874(e) of the Social Security Act and meets the requirements at §§ 401.703 through 401.710.

(b) *Provider of services.* A provider of services under this subpart is defined in the same manner as the identical term at section 1861(u) of the Social Security Act.

(c) *Supplier.* A supplier under this subpart is defined in the same manner as the identical term at section 1861(d) of the Social Security Act.

(d) *Claims.* Claims are itemized billing statements from providers of services and suppliers that, except in the context of Part D drug event date, request reimbursement for a list of services and supplies that were provided to a Medicare beneficiary in the Medicare fee-for-service context, or to a participant in other insurance or entitlement program contexts. In the Medicare program, claims files are available for each institutional (inpatient, outpatient, skilled nursing facility, hospice, or home health agency) and non-institutional (physician and durable medical equipment providers

and suppliers) claim type as well as Medicare Part D (Prescription Drug) Event data.

(e) *Standardized data extract.* For purposes of this subpart, the standardized data extract is the subset of Medicare claims data that the Secretary would make available to qualified entities under this subpart.

(f) *Beneficiary identifiable data.* For the purposes of this subpart, beneficiary identifiable data is any data that contains the beneficiary name or beneficiary name and any other direct identifying factors, including, but not limited to, race, sex, age, or address.

(g) *Encrypted data.* For the purposes of this subpart, encrypted data is any data that does not contain the beneficiary name or any other direct identifying factors, but does include a unique beneficiary identifier that allows for the linking of claims without divulging the direct identifier of the beneficiary.

§ 401.703 Eligibility criteria for qualified entities.

(a) *Eligibility criteria:* To be eligible to apply to receive data as a qualified entity under this section, an applicant generally must demonstrate expertise and sustained experience, defined as three or more years, to the Secretary's satisfaction in the following three areas:

(1) Organizational and governance criteria, including:

(i) Accurately calculating quality, efficiency, effectiveness, and resource use measures from claims data, including:

(A) Indentifying an appropriate method to attribute a particular patient's services to specific providers of services and suppliers.

(B) Ensuring the use of approaches to ensure statistical validity such as a minimum number of observations or minimum denominator for each measure.

(C) Using methods for risk-adjustment to account for variation in both case-mix and severity among providers of services and suppliers.

(D) Identifying methods for handling outliers.

(E) Correcting measurement errors and assessing measure reliability.

(F) Identifying appropriate peer groups of providers and suppliers for meaningful comparisons.

(ii) A business model that would cover the costs of performing the required functions, including the fee for the data.

(iii) Successfully combining claims data from different payers to calculate performance reports.

(iv) Designing, and continuously improving the format of performance reports on providers of services and suppliers.

(v) Preparing an understandable description of the measures used to evaluate the performance of providers of services and suppliers so that consumers, providers of services and suppliers, health plans, researchers, and other stakeholders can assess performance reports.

(vi) Implementing and maintaining a process for providers of services and suppliers identified in a report to review the report prior to publication and providing a timely response to provider of services and supplier inquiries regarding requests for data, error correction, and appeals.

(vii) Establishing, maintaining, and monitoring a rigorous data privacy and security program, including disclosing to CMS any inappropriate disclosures of beneficiary identifiable information or HIPAA violations for the preceding 10-year period, and any corrective actions taken to address such issues.

(viii) Accurately preparing performance reports on providers of services and suppliers and making performance report information available to the public in aggregate form, that is, at the provider of services or supplier level.

(2) Ability to combine Medicare claims data with claims data from other sources, including demonstrating to the Secretary's satisfaction that the claims data from other sources that it intends to combine with the Medicare data received under this subpart address many of the methodological concerns expressed by multiple stakeholders regarding the calculation of performance measures from a single payer source.

(3) Documentation of rigorous data privacy and security policies including enforcement mechanisms.

(b) [Reserved]

§ 401.704 Operating and governance requirements for qualified entities.

(a) Submit to CMS a list of all measures it intends to calculate and report, the geographic areas it intends to serve, and the methods of creating and disseminating reports. This list must include the following information:

(1) Name of the measure, and whether it is a standard or alternative measure,

(2) Name of the measure developer/owner,

(3) Measure specifications, including numerator and denominator,

(4) The rationale for selecting each measure, including the relationship to existing measurement efforts and the relevancy to the population in the geographic area(s) the entity would serve, including:

(i) A specific description of the geographic area or areas it intends to serve, and

(ii) A specific description of how each measure evaluates providers of services and suppliers on quality, efficiency, effectiveness, and/or resource use.

(5) A description of the methodologies it intends to use in creating reports with respect to all of the following topics:

(i) Attribution of beneficiaries to providers and/or suppliers,

(ii) Benchmarking performance data, including:

(A) Methods for creating peer groups,

(B) Justification of any minimum sample size determinations made, and

(C) Methods for handling statistical outliers.

(iii) Risk adjustment.

(b) Submit to CMS a description of the process it would establish to allow providers of services and suppliers to view reports confidentially, request data, and ask for the correction of errors before the reports are made public.

(c) Submit to CMS a prototype report and a description of their plans for making the reports available to the public.

§ 401.705 The application process and requirements.

(a) *Application deadline.* Qualified entity applications must be submitted by March 31, 2012 and by the close of the first quarter of the calendar year each year thereafter.

(b) *Selection criteria.* To be approved as a qualified entity under this subpart, the applicant must meet the eligibility and operational and governance requirements, and fulfill all of the application requirements to CMS' satisfaction, agree to pay a fee equal to the cost of CMS making the data available, and execute a Data Use Agreement with CMS, that among other things, reaffirms the statutory ban on the use of Medicare data provided to the qualified entity by CMS under this subpart for purposes other than those referenced in this subpart.

(c) *Duration of approval.* The entity would be permitted to participate as a qualified entity for a period of three years from the date of notification of application approval by CMS. The qualified entity must abide by all CMS regulations and instructions for this program. If the qualified entity wishes to continue performing the tasks under this subpart after the three-year approval period, the entity may re-apply for qualified entity status following the procedures set forth below.

(d) *Reporting period.* Unless otherwise specified, the qualified entities must produce reports on the

performance of providers of services and suppliers annually beginning in the calendar year after they are approved by CMS.

(e) *The distribution of data.* Once a qualified entity is approved by CMS under this subpart, it would be required to pay a fee equal to the cost of CMS making this data available. After the qualified entity pays the fee, CMS would release claims data to the qualified entity.

(1) CMS would release standardized extracts of encrypted data from Medicare parts A and B claims data, and D drug event data for the most recent three years of data available at that time. The data would be limited to the geographic spread of the qualified entity's other claims data as determined by CMS.

(2) After the first year of participation, CMS would provide qualified entities with the most recent additional year of data on a yearly basis. Qualified entities would be required to pay a fee equal to the cost of CMS making this data available before CMS would release the most recent year of additional data to the qualified entity.

(f) *Re-application.* Qualified entities in good standing may re-apply for qualified entity status. A qualified entity would be considered in good standing if it has had no violations of the requirements of the program or if the qualified entity is addressing any past deficiencies either on its own or through the implementation of a corrective action plan. To reapply a qualified entity would need to submit to CMS documentation of any changes to what was included in their original application. Reapplicants would need to submit this documentation at least 6 months before the end of their three year approval period and would be able to continue to serve as qualified entities until the re-application is either approved or denied by CMS. If the re-application is denied, CMS would terminate its relationship with the qualified entity.

§ 401.706 Updates to plans submitted as part of the application process.

(a) If a qualified entity wishes to make changes to:

(1) Its list of proposed measures, the qualified entity must send all the information referenced in § 401.704(a) for the new measure to CMS at least 90 days prior to its intended confidential release to providers of services and suppliers.

(2) Its proposed prototype report, the qualified entity must send the new prototype report to CMS at least 90 days prior to its intended confidential release to providers of services and suppliers.

(3) Its plans for sharing the reports with the public, the qualified entity must send the new plans to CMS at least 90 days prior to its intended confidential release to providers of services and suppliers.

(b) The qualified entity would be notified when its proposed changes are approved or denied for use. Under no circumstances may a qualified entity issue a report, use a measure, or share a report without first obtaining CMS approval.

(c) If the amount of claims data from other sources available to a qualified entity decreases, the qualified entity must immediately inform CMS and submit documentation that the remaining claims data from other sources is sufficient to address the methodological concerns regarding sample size and reliability. Under no circumstances may a qualified entity issue a report, use a measure, or share a report after this point.

(1) If CMS determines that the remaining claims data is not sufficient, the qualified entity would have 60 days to acquire new data and submit new documentation to CMS. If after 60 days, the qualified entity does not have access to new data or if CMS decides the qualified entity still does not possess the need amount of additional claims data, CMS shall terminate its relationship with the qualified entity.

(2) If CMS determines that the remaining claims data is sufficient, the qualified entity may resume issuing reports, using measures, and sharing reports.

§ 401.707 Ensuring the privacy and security of data.

(a) Qualified entities must comply with the data requirements in the data use agreement (DUA) with CMS. The DUA would require the qualified entity to maintain privacy and security protocols throughout the duration of their agreement with CMS and would ban the use of data for purposes other than those referenced in this subpart. The DUA would also prohibit the use of unsecured telecommunications to transmit CMS data and would require disclosure of the circumstances under which CMS data would be stored and transmitted.

(b) Qualified entities must inform each beneficiary whose beneficiary identifiable data has been or is reasonably believed to have been inappropriately accessed, acquired, or disclosed pursuant to the DUA.

§ 401.708 Selection and use of performance measures.

(a) *Standard measure.* A standard measure is defined as a measure that can be calculated from the standardized extracts of Medicare Parts A and B claims, and Part D drug event data that:

(1) Meets one of the following criteria:

(i) Endorsed by the entity with a contract under section 1890(a) of the Social Security Act;

(ii) Time-limited endorsed by the entity with a contract under Section 1890(a) of the Social Security Act until such time as the full endorsement status is determined;

(iii) Developed pursuant to section 931 of the Public Health Service Act; or

(iv) Can be calculated from standardized extracts of Medicare parts A or B claims or part D drug event data, was adopted through notice and comment rulemaking and is currently being used in CMS programs that include quality measurement.

(2) Is used in a manner that follows the measure specifications as written (or as adopted through notice and comment rulemaking), including all numerator and denominator inclusions and exclusions, measured time periods, and specified data sources.

(b) *Alternative measure.* (1) An alternative measure is defined as a measure that is not a standard measure, but that can be calculated from the standardized extracts of Medicare Parts A and B claims, and Part D drug event data that:

(i) Has been found by the Secretary through a notice and comment rulemaking process, to be more valid, reliable, responsive to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by standard measures, and,

(ii) Is used by a qualified entity in a manner that follows the measure specifications as written (or as adopted through notice and comment rulemaking), including all numerator and denominator inclusions and exclusions, measured time periods, and specified data sources.

(2) An alternative measure may be used up until the point that a standard measure for the particular clinical area or condition becomes available at which point the qualified entity must switch to the standard measure within 6 months or submit additional scientific justification and receive approval from the Secretary to continue using the alternative measure.

(3) To submit an alternative measure for consideration for use in the following calendar year an entity must submit the following by May 31st:

(i) The name of the alternative measure.

(ii) The name of the alternative measure's developer or owner.

(iii) Detailed specifications for the alternative measure.

(iv) Information demonstrating how the alternative measure is more cost-effective, relevant to consumer preferences, cost-effective, or relevant to dimensions of quality and resource use not addressed by standard measures.

§ 401.709 Provider of services and supplier requests for error correction.

(a) Qualified entities must confidentially share measures, measurement methodologies, and measure results with providers of services and suppliers at least 30 business days prior to making reports public. The 30 days begins on the date on which qualified entities send the confidential reports to providers of services and suppliers.

(b) Qualified entities must allow providers of services and suppliers at least 10 business days after receipt of a report to make a request for the data.

(c) Qualified entities must allow providers of services and suppliers at least 10 business days after receipt of the data to make a request for error correction.

(d) If a qualified entity receives a request for beneficiary names from a provider of services or supplier, the qualified entity must forward that request to CMS including a copy of the signed request from the provider of services or supplier as an attachment.

(1) After the qualified entity receives the beneficiary names from CMS and sends the information to the requesting provider of services or supplier, the qualified entity must immediately destroy that data and is not permitted to retain or use the beneficiary names in any way.

(2) If a qualified entity does not immediately destroy all identifiable data after sharing the information with the requesting provider of services or supplier, it will be subject to the penalties referenced in § 401.710(d).

(e) Qualified entities must inform providers of services and suppliers that reports would be made public, including information related to the status of any data or error correction requests, after a specified date (at least 30 business days after the report was originally shared with providers of services and suppliers), regardless of the status of any requests for error correction.

(f) If a provider of services or supplier still has a data or error correction request outstanding at the time of making the reports public, the qualified entity must, if feasible, post publicly the name of the appealing provider and the category of the appeal request.

§ 401.710 Monitoring and sanctioning of qualified entities.

(a) CMS would monitor and assess the performance of qualified entities using the following methods:

(1) Audits

(2) Submission of documentation of data sources and quantities of data upon the request of CMS and/or site visits

(3) Analysis of specific data reported to CMS by qualified entities through annual reports, as described in paragraph (b) of this section, and reports on inappropriate disclosures or uses of beneficiary identifiable data, as described in paragraph (c) of this section.

(4) Analysis of beneficiary and/or provider complaints

(b) Qualified entities must provide annual reports to CMS containing information related to:

(1) General program adherence, including:

(i) The number of Medicare and private claims combined.

(ii) The percent of the overall market share the number of claims represents in the qualified entity's area.

(iii) The number of measures calculated.

(iv) The number of providers of services and suppliers profiled by type of provider and supplier.

(v) A measure of public use of the reports.

(2) The provider of services and suppliers data sharing, error correction, and appeals process, including:

(i) The number of providers of services and suppliers requesting claims data.

(ii) The number of requests for claims data fulfilled.

(iii) The number of error corrections.

(iv) The type(s) of problem(s) leading to the request for error correction.

(v) The time to acknowledge the request for data or error correction.

(vi) The time to respond to the request for error correction.

(vii) The number of requests for error correction resolved.

(c) Qualified entities must inform CMS of inappropriate disclosures or uses of beneficiary identifiable data pursuant to the requirements in the DUA.

(d) CMS may take the following actions against qualified entities if it is determined that they are violation of any of the requirements of the qualified entity program, regardless of how CMS learns of the violation:

(1) Provide a warning notice, which indicates that future deficiencies could lead to termination, to the qualified entity of the specific concern

(2) Request a corrective action plan (CAP) from the qualified entity

(3) Place the qualified entity on a special monitoring plan

(4) Terminate the qualified entity

§ 401.711 Termination of qualified entities.

(a) *Grounds for terminating a qualified entity agreement.* CMS may terminate an agreement with a qualified entity if the qualified entity:

(1) Engages in one or more serious violations of the requirements of the qualified entity program.

(2) Fails to completely and accurately report information to CMS or fails to make timely corrections to reported performance information per providers of services and supplier requests for such correction.

(3) Fails to submit an approvable corrective action plan (CAP), fails to implement an approved CAP, or fails to demonstrate improved performance after the implementation of a CAP.

(4) Improperly uses or discloses claims information received from CMS in violation of the requirements of the regulations in this subpart.

(5) Based on their reapplication, no longer meets the requirements in this subpart.

(b) Return of CMS data upon voluntary or involuntary termination from the qualified entity program:

(1) If a qualified entity's agreement with CMS is terminated by CMS, it must immediately upon receipt of notification of such termination commence returning or destroying any and all CMS data (and any derivative files). In no instance should this process exceed 30 days.

(2) If a qualified entity voluntarily terminates participation in the program, it must return to CMS, or destroy, any and all CMS data in its possession within 30 days notifying CMS of its intent to end participation.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: *May 4, 2011.*

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

Approved: *June 1, 2011.*

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2011–14003 Filed 6–3–11; 11:15 am]

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Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917 et al.
Standards Improvement Project—Phase III; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928

[Docket No. OSHA–2006–0049]

RIN 1218–AC19

Standards Improvement Project—Phase III

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

ACTION: Final rule.

SUMMARY: Phase III of the Standards Improvement Project (SIP–III) is the third in a series of rulemaking actions to improve and streamline OSHA standards. The Standards Improvement Project removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. OSHA identified several requirements for SIP–III (e.g., rigging, NIOSH records, and training certifications) for improvement based on the Agency's review of its standards, suggestions and comments from the public, or recommendations from the Office of Management and Budget (OMB). OSHA believes that improving these standards will help employers to better understand their obligations, promote safety and health for employees, lead to increased compliance, and reduce compliance costs. OSHA estimates that these changes will result in annualized savings for employers of over $45 million, and will reduce paperwork burden by 1.85 million hours annually.

DATES: This final rule becomes effective on July 8, 2011. As this rule imposes no new burdens on employers, employers may comply with the revised provisions prior to the effective date, which is 30 days after publication of this final rule. The Director of the Federal Register approved the incorporation by reference of specific publications listed in this final rule under 5 U.S.C. 552(a) and 1 CFR 51 as of July 8, 2011

ADDRESSES: In compliance with 28 U.S.C. 2112(a)(2), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT: Camilla McArthur, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION:

A. Exhibits Referenced in This Rule

The exhibits referenced by OSHA in this rule are in Docket No. OSHA–2006–0049, which is the docket for this rulemaking. The docket is available at *http://www.regulations.gov,* the Federal eRulemaking Portal. In this notice, OSHA designates exhibits as "ID." The digit(s) following this designation refer to the full document number at *http://www.regulations.gov.* For example, the exhibit number referenced as ID 0151.1 in this notice is document number OSHA–2006–0049–0151.1 under the column labeled "ID" at *http://www.regulations.gov;* this document happens to be a comment submitted by the National fire Protection Association.

Most exhibits, including public comments, supporting materials, meeting transcripts, and other documents, are available at *http://www.regulations.gov;* some exhibits (e.g., copyrighted material) are not available to read or download from that Web page. However, all materials in the docket are available for inspection and copying at the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350.

B. Table of Contents

The following table of contents identifies the major sections of the preamble to the Standards Improvement Project—Phase III (SIP–III) final rule:

I. Background

A. Introduction

Phase III of the Standards Improvement Project (SIP–III) is the third in a series of rulemaking actions to improve and streamline OSHA standards. Historically, the Standards Improvement Project removes or revises individual requirements within rules that are confusing, outdated, duplicative or inconsistent. OSHA believes that improving these standards helps employers to better understand their obligations, promotes safety and health for employees, and leads to increased compliance and reduced compliance costs. OSHA summarizes the revised standards and revisions below, and describes them in detail in section III, Summary and Explanation of the Final Rule.

First, OSHA is revising the title of 29 CFR part 1910, subpart E, of the general industry standard, and is revising § 1910.35 to incorporate by reference the most current version of the National Fire Protection Association's (NFPA) *Life Safety Code.* To provide greater flexibility, OSHA also added a second compliance alternative. OSHA made several minor revisions to other sections in this subpart to correspond to the new language in § 1910.35.

In subpart I, OSHA is deleting requirements that employers prepare and maintain written training certification records. OSHA does not believe that the training certification records required by the four standards provide a safety or health benefit to employees, nor are the burden hours and cost to employers justified. These standards are the general industry Personal Protective Equipment (PPE) standard (§ 1910.132); the shipyard employment PPE standard (§ 1915.152); and the general industry and construction Cadmium standards (§§ 1910.1027 and 1926.1127).

There are seven revisions to the Respiratory Protection standard at § 1910.134. One revision clarifies which breathing-gas containers employers must provide pursuant to the standard (§ 1910.134(i)(9)). To provide additional clarification, OSHA is revising language in Appendix C of § 1910.134, and updating the language of the DOT regulations referenced in § 1910.134(i)(4)(i). OSHA also deleted duplicative and inconsistent statements in Appendix D of § 1910.134, and also in the Asbestos standard for shipyards (§ 1915.1001) and construction (§ 1926.1101). OSHA revised paragraph (c)(4)(iv) of § 1910.1003 to correct an inadvertent omission from the respiratory-protection requirements for four of the 13 carcinogen standards. Lastly, OSHA also removed the requirement to keep fit-test records from the 1,3–Butadiene standard (§ 1910.1051 (m)(3)).

There are two revisions under subpart J. First, OSHA is revising and updating the definition of the term "potable water" in the Sanitation standards for general industry and construction (§ 1910.141(a)(2); § 1926.51(a)(6)), and

the Field Sanitation standard for agriculture (§ 1928.110(b)). Second, OSHA is revising the Bloodborne Pathogens standard by removing the word "hot" from the definition of "handwashing facilities" at § 1910.1030(b) in the phrase "hot air drying machines," which permits employers to use new technologies (e.g., high-velocity air blowers) in the workplace. This revision also applies to sanitation standards for general industry (§ 1910.141(d)(2)(iv)), marine terminals (§ 1917.127(a)(1)(iii)), longshoring (§ 1918.95(a)(1)(iii)), and construction (§ 1926.51(f)(3)(iv)).

OSHA is updating its standards regulating slings for general industry (§ 1910.184); shipyard employment (§§ 1915.112, 1915.113, and 1915.118), and construction (§ 1926.251). Modifications to these standards include removing previous load-capacity tables (§ 1910.184, tables N–184–1, N–184–3 through N–184–22; and G–1 through G–5, G–7, G–8, and G–10) and references to these tables (§ 1915.112; § 1915.113; and § 1926.251; tables H–1 and H–3 through H–19). Employers now must use slings with permanently affixed identification markings that depict the maximum load capacity. The final rule provides similar protection for shackles in §§ 1915.113 and 1926.251.

In subpart T, OSHA is removing two obsolete recordkeeping requirements from the Commercial Diving Operations standard (§ 1910.440 (b)(3)(i) and (b)(5)), and correcting a typographical error (§ 1910.440 (b)(4)).

In subpart Z, OSHA also is removing the requirement for employers to transfer specific records to the National Institute for Occupational Safety and Health (NIOSH) (for example, § 1910.1020). Finally, OSHA is making several other miscellaneous revisions. For example, OSHA is removing duplicative respiratory-protection requirements, and is amending the trigger levels in the Lead standards for general industry and construction (§§ 1910.25 and 1926.62).

Additional revisions to maritime standards include adding a clarification to the definition of "hot work," adding a definition for "ship's stores," and updating gear-certification requirements to conform to the International Labor Organization (ILO) Convention.

OSHA discusses all of these revisions in detail in the Summary and Explanation section of this notice. The revisions above, when considered together, will reduce compliance costs, eliminate paperwork burdens, and clarify requirements without diminishing worker protections.

B. Regulatory History

The Standards Improvement Project (SIP) began in response to a 1996 *Presidential Memorandum on Improving Government Regulations.* SIP–I, published on July 22, 1996 (61 FR 37849) effected several changes to the general industry and construction standards, including the removal of obsolete medical tests and the elimination of unnecessary cross-references. After the success of SIP–I, OSHA completed SIP–II, which it published on January 5, 2005 (70 FR 1111). SIP–II focused on revising health standards to reduce regulatory burden, facilitate compliance, eliminate unnecessary paperwork, and revise employee-notification requirements.

SIP–III builds on the success of SIP–I and SIP–II, and continues with the removal or revision of out-of-date and inconsistent rules. OSHA selected the regulations for improvement in SIP–III based on the Agency's review of its standards, suggestions and comments from public and private entities either to OSHA directly or in the OMB report, Regulatory Reform of the U.S. Manufacturing Sector (2005).

SIP–III received support from several stakeholders who provided comments to both an Advanced Notice of Proposed Rulemaking (ANPR) published on December 21, 2006 (71 FR 76623), and the proposal published on July 2, 2010 (75 FR 38646). SIP–III is consistent with the current goals and objectives of this Administration, as evidenced by Executive Order 13563 (76 FR 3821), titled "Improving Regulation and Regulatory Review," issued on January 18, 2011, by President Obama. Specifically, the Executive Order requests that agencies review existing and proposed standards and regulations to ensure they effectively protect "public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation." The Executive Order continues:

> [Our regulatory system] must allow for public participation and an open exchange of ideas. It must promote predictability and reduce uncertainty. It must identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. It must take into account benefits and costs, both quantitative and qualitative. It must ensure that regulations are accessible, consistent, written in plain language, and easy to understand. It must measure, and seek to improve, the actual results of regulatory requirements.

The Executive Order sets forth requirements for agencies to follow when promulgating standards. The requirements detail several principles for agencies to observe during the rulemaking process, including public participation, integration and innovation, flexible approaches, and retrospective analysis of existing rules. Specifically, the Executive Order provides the following direction to agencies regarding retrospective analysis:

> To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

As previously discussed, the SIP process is a proven and successful means to review, update, and revise regulations. SIP–III, in particular, embodies the goals and objectives specified in the Executive Order because it ensures that OSHA's standards are understandable, relevant, do not overly burden employers, and, most importantly, provide regulations that are effective in keeping America's workers safe.

II. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et al.*) is "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *." (See 29 U.S.C. 651(b).) To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards, authorizing summary adoption of existing national consensus and established Federal standards within two years of the effective date of the OSH Act (29 U.S.C. 655(a)); authorizing promulgation of standards pursuant to notice-and-comment (29 U.S.C. 655(b)); and requiring employers to comply with OSHA standards (29 U.S.C. 654(b)).

An occupational safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment" (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk. In addition, it must be technologically and economically feasible, cost effective, and consistent with prior Agency action, or a justified departure from that action. Substantial evidence must support the standard, and the standard

must effectuate the OSH Act's purposes better than any national consensus standard it supersedes. (See 58 FR 16612–16616, March 30, 1993.)

A standard is technologically feasible when the protective measures it requires already exist, when available technology can bring the protective measures into existence, or when that technology is reasonably likely to develop. (See *American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981) (*ATMI*); *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (DC Cir. 1991) (*AISI*)). A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI,* 452 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (DC Cir.1994) (*LOTO II*).

Section 6(b)(7) of the OSH Act authorizes OSHA to include in its standards requirements for labeling, monitoring, medical testing, and other information-gathering and transmittal provisions (29 U.S.C. 655(b)(7)). OSHA safety standards also must be highly protective. (See 58 FR at 16614–16615; *LOTO II,* 37 F.3d at 668–669.) Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired" (29 U.S.C. 655(b)(5)).

III. Summary and Explanation of Final Rule

OSHA proposed a number of actions to amend its standards, including revisions to the Agency's general industry, maritime, construction, and agricultural standards. A detailed description and the Agency's rational for each revision follows. Also discussed are the comments the Agency received in response to the changes it proposed. OSHA made some of the revisions in more than one industry. For example, the revisions to the general industry Slings standard also are made in shipyard employment and the construction industry. When revisions in a general industry standard are also made in additional industries, OSHA will discuss the revisions fully in the general industry section, and then reference the provisions affected in the sections covering the other industries.

A. Revisions in General Industry Standards (29 CFR 1910)

1. Subpart E

OSHA is making several revisions to subpart E. First, the title of subpart E changes from "Means of Egress" to "Exit Routes and Emergency Planning." OSHA previously changed the title in 2002 when the Agency updated subpart E in its entirety (67 FR 67949); the new title was "Exit Routes, Emergency Action Plans, and Fire Prevention Plans." However, due to a printing error, the change was not made. In the SIP–III NPRM, OSHA proposed changing the title of subpart E to the more concise "Exit Routes and Emergency Planning."

In response to the NPRM, the National Fire Protection Association (NFPA) (ID 0151.1) noted that the NFPA Life Safety Code (NFPA 101) and the International Code Council (ICC) codes use the term "means of egress," and claimed, "Fire marshals, code officials, architects, engineers, and safety managers are familiar with the term 'means of egress' and understand what components constitute the means of egress * * *." There were no other comments submitted to the docket on this issue.

While the term "means of egress" as used by the NFPA may be familiar to many in the fire-regulation community, OSHA's requirements of subpart E consistently use the term "exit routes" throughout, including in the "Coverage and Definitions" section. Therefore, OSHA is revising the title of subpart E to "Exit Routes and Emergency Planning," as proposed.

OSHA's requirements for exit routes at §§ 1910.36, and 1910.37 of subpart E are general, performance-oriented, and do not address every situation that may arise. Section 1910.35 provides employers with a compliance alternative to §§ 1910.36, and 1910.37 that they can use to cover a variety of situations. Specifically, it permits employers to demonstrate compliance with the exit-route provisions of NFPA 101 instead of the requirements in § 1910.36 or 1910.37. Existing § 1910.35 refers to the 2000 edition of the NFPA 101 as the alternative means of compliance. OSHA proposed to update this provision to permit employers to comply with Chapter 7 of the 2009 edition of NFPA 101, which covers means of egress, or exit routes. OSHA believed that Chapter 7 of the later edition of NFPA 101 would provide a level of employee safety equivalent to, or higher than, the requirements of §§ 1910.34, 1910.36, and 1910.37.

OSHA also proposed to revise § 1910.35 to add a second compliance alternative that would deem employers to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37, provided that employers can demonstrate compliance with the exit route provisions contained in Chapter 10 of the of the ICC International Fire Code (IFC).

NFPA commented (ID 0151.1) that using only Chapter 7 of NFPA 101 for the compliance alternative as proposed in the NPRM is inadequate, noting that "a broader reference to the 2009 edition of NFPA 101 is in order as those who enforce the OSHA rules understand that supplemental egress rules in the occupancy chapters have application." After considering the NFPA's comment, OSHA agrees that all of the provisions contained in the full standard related to exit routes are necessary for proper application because other chapters in the NFPA 101 also include provisions for means of egress. For example, administrative provisions such as scope, applicability, and equivalency are in Chapter 1, while definitions for terms used in Chapter 7 are in Chapter 3. Chapter 8 contains provisions for fire barriers, smoke barriers, and smoke partitions that are necessary to achieve the compartmentation features (such as stair enclosures) for means of egress. Chapter 11 contains provisions for high-rise buildings and other special structures. Chapters 12 through 42 have provisions that apply to exit routes for buildings of specific occupancy types. Chapters 11 through 42 adapted, as appropriate, the basic provisions of the core chapters (1 through 10) when addressing specific occupancies, differing occupant capabilities, and various building types. Some examples of these adaptations include sprinkler system trade-offs, conditions where a single exit would be acceptable, lengthened or shortened travel distance to exits, and wider or narrower aisles based on occupant load. Referencing the corresponding portions of the entire 2009 NFPA 101 standard that relate to exit routes, rather than a single chapter, is consistent with the previously existing compliance alternative in § 1910.35 that referenced the exit-route provisions of the entire 2000 edition of NFPA 101.

Similarly, § 1910.35 of the final rule references the entire IFC standard, rather than only Chapter 10, as initially proposed. OSHA determined that the full IFC standard is necessary for proper application of the exit-route requirements. OSHA believes that these additional compliance options will benefit employers because they will provide employers with flexibility to use the compliance option that best

serves their needs, while maintaining the same level of protection as OSHA's subpart E rules. OSHA also is revising the Table of Contents in § 1910.33, the definition for "occupant load" in § 1910.34, and two notes in § 1910.36, consistent with the new language in § 1910.35.

In the NPRM, OSHA explained the suitability of allowing the IFC to serve as an equivalent compliance option. Comments received in response to the NPRM from ICC (ID 0157.1) and several construction code-enforcement agencies supported the change to add the IFC compliance alternative. The Jefferson County, CO, Division of Building Safety (ID 0152.1) indicated that this compliance option "streamlines the design and construction process while providing safety for all occupants including workers." The New York Department of State, Division of Code Enforcement and Administration (ID 0158.1), states that this compliance option would "assist in streamlining our regulatory process" and "result in the potential for reduced construction costs without reducing the state's established standards for safety." As it did in response to the ANPR, the City of Hampton (ID 0159.1) agrees that this additional compliance option would be beneficial.

The only opposition to the addition of the IFC compliance option came from the NFPA (ID 0151.1 and 0162.3). Similar to its response to the ANPR, NFPA did not address whether the IFC provides a level of safety equivalent to subpart E, but rather whether the IFC provides a level of safety equivalent to the NFPA 101. OSHA finds that the information provided by NFPA does not address whether the IFC serves as an effective compliance option to subpart E; therefore, OSHA determined that compliance with the exit-route provisions of either the NFPA 101 or the IFC provides protection at least equivalent to the requirements of subpart E.

Another concern raised by NFPA (ID 0151.1 and 0162.3) was that the IFC developed the ICC codes under consensus principles that differ from those used to develop NFPA codes. OSHA again maintains that the issue of concern is whether the ICC codes provide a level of employee protection equal to that provided by subpart E, regardless of the method of development. While it is true that OSHA must consider consensus standards in developing its mandatory standards, in conformance with section 6(b)(8) of the OSH Act, the National Technology Transfer and Advancement Act of 1995 (NTTAA), and OMB Circular A–119, these documents do not restrict OSHA to using only consensus standards. OSHA is not using the ICC codes to promulgate a government-unique standard, but rather to allow compliance alternatives that provide workers with an equivalent level of safety to that which OSHA provides in the existing subpart E requirements.

NFPA (ID 0151.1) also stated that Section 3(9) of the OSH Act has "long established the use of ANSI and NFPA documents as the source of OSHA's regulations." This provision of the Act, however, does not restrict the Agency from using additional standards. OSHA previously considered a national consensus standard (NFPA 101), and determined the standard was an acceptable compliance alternative. OSHA in this rulemaking, however, also determined that the IFC provides at least the same level of employee protection as the existing requirement and, thus, OSHA has the authority to use the IFC standard, regardless of whether it meets the OSH Act's definition of a "national consensus standard" (as defined in Section 3(9) of the OSH Act).

The last concern raised by NFPA (ID 0151.1 and 0162.2) is the suitability of the IFC codes for existing buildings. IFC Section 1026, "Means of Egress for Existing Buildings" and Section 1027, "Maintenance of the Means of Egress," address specifically this issue. OSHA notes that subpart E does not differentiate between new and existing buildings, thus allowing employers to determine the egress features needed for employee safety in existing buildings. OSHA further notes that paragraph 4.6.5 in the 2009 edition of NFPA 101, allows for the modification of any requirements in existing buildings "where it is evident that a reasonable degree of safety is provided." OSHA, therefore, concludes that both the NFPA 101 and the IFC independently provide a degree of flexibility for existing buildings comparable to subpart E.

The ICC (ID 0157.1) raised the issue of whether future editions of the IFC would serve as acceptable compliance alternatives to § 1910.35. The Agency notes that it cannot incorporate by reference the latest editions of consensus standards without undertaking new rulemaking because such action would delegate the government's regulatory authority to consensus standards developing organizations, as well as deprive the public of the notice-and-comment period required by law. Therefore, each compliance option must specify the edition of the corresponding standard, in this case NFPA 101–2009 and the IFC–2009. OSHA only proposed and evaluated those particular editions for equivalency in terms of employee protection.

Most of the information received in response to both the ANPR and the NPRM supports the incorporation of the 2009 editions of the NFPA 101 and IFC standards in § 1910.35 as compliance alternatives for §§ 1910.34, 1910.36, and 1910.37. The Agency believes these changes will increase compliance flexibility, achieve greater compatibility with many State and local jurisdictions, while maintaining employee protection.

2. Subpart I

a. Training Certification Records

The Cadmium and Personal Protective Equipment (PPE) standards require employers to verify that affected workers received training through a written certification record that includes, at a minimum, the name(s) of the workers trained, the date(s) of training, and the types of training the workers received. In the NPRM, OSHA proposed removing paragraph (f)(4) of the general industry PPE standard, § 1910.132; paragraph (e)(4) of the shipyard employment PPE standard § 1915.152; and paragraph (n)(4) of the general industry and construction Cadmium standards, §§ 1910.1027 and 1926.1127, respectively, all of which require employers to prepare and maintain a written record certifying compliance with the training requirements of these sections. For the NPRM, the Agency estimated that it takes over 1.8 million hours annually for employers to develop and maintain the training-certification records mandated by the PPE standards in §§ 1910.132 and 1915.152, and more than 3,000 hours annually for employers to develop and maintain the training-certification records provision required by the Cadmium standards for general industry (§ 1910.1027) and construction (§ 1926.1127). In the NPRM, OSHA stated that it believed that the training-certification records required by the four standards do not provide a safety or health benefit sufficient to justify the burden hours and cost to employers, and that employers ensure that work practices and use of PPE are consistent with the training received by observing employees as they work, not through maintaining training-certification records.

Three commenters opposed the removal of these written training-record requirements. The BCTD, AFL–CIO (ID 0156.1) stated that "the importance of the written certification [is] to reinforce the requirement that employers satisfy

themselves that their employees are appropriately trained." Similarly, the AFL–CIO (ID 0160.1) said that "documentation of training is an important element of the training process. It not only serves to provide written assurance that the training was, in fact, provided but also serves to reinforce and remind the employer that training is required to be provided in the first place." 3M (ID 0154.1) expressed concern that eliminating the requirement to document training may convey to employers that OSHA is loosening employer obligations for providing PPE and training for employees.

OSHA does not believe that removal of training-certification record requirements indicates a weakening of PPE training requirements as suggested by these commenters. First, OSHA believes that worker training on the proper use of PPE is essential to ensure its effectiveness, and OSHA is not deleting any requirements that employers train workers appropriately in the use of PPE. However, OSHA believes that the workers can demonstrate knowledge of the proper use of PPE, and employers can observe easily such use in the workplace, without the need for paper certifications. If a worker is not using the PPE properly, the employer can retrain the worker as necessary, thereby ensuring that the employee obtains the maximum benefit for the PPE.

OSHA also notes that, of all of OSHA's substance-specific health standards, only the Cadmium standards for general industry and construction require written certification to document training. Furthermore, OSHA's Respiratory Protection standard, § 1910.134, requires in paragraph (k) that employers ensure workers "can demonstrate knowledge" of the capabilities, limitations, and use of respiratory protective equipment, and there is no requirement for written certification of training. Thus, for all of these health standards, with the exception of the Cadmium standards, OSHA relies on demonstration of worker knowledge as evidence that employers provided workers with adequate training in the use of PPE.

OSHA considered the above arguments and does not agree with the commenters. While OSHA believes that training workers in the proper wear and use of PPE and the hazards associated with exposure to Cadmium, as well as other hazardous substances, is essential, it is not persuaded by the arguments that written certification improves the overall effectiveness of the training. Effective training ensures that workers understand the proper work practices, and can reduce rates of injuries and illnesses. Removing the certification requirements of these standards will not change the requirements for employers to provide effective training.

Therefore, OSHA is removing paragraph (f)(4) of the general industry PPE standard (§ 1910.132), paragraph (e)(4) of the shipyard employment PPE standard, § 1915.152, and paragraph (n)(4) of the general industry and construction Cadmium standards, §§ 1910.1027 and 1926.1127, which required employers to prepare and maintain a written record certifying compliance with the training requirements of these sections.

In the SIP–III proposal, OSHA also requested comment on 12 other standards in general industry, construction, and shipyard employment that require employers to prepare written records or documents to certify that they complied with training requirements. OSHA received no comments in support of revoking these additional (12) requirements.

The BCTD, AFL–CIO (ID 0156.1) stated that OSHA should consider this question in the context of a comprehensive examination of its training requirements. 3M (ID 0154.1) suggested that OSHA modify all training sections in all OSHA standards to include a training documentation section that is consistent with section 7.2.2 of the ANSI/ASSE Z490.1–2009 standard, *Criteria for Accepted Practices in Safety, Health, and Environmental Training,* which prescribes that employers record specific information related to the training workers receive (i.e., date, location, instructor credentials). In the future, OSHA may consider consolidating all of its requirements in a comprehensive standard; however, for now, OSHA is not removing the existing training certification recording requirements for those 12 standards.

b. Respiratory Protection

OSHA is making seven revisions related to the Respiratory Protection standard in § 1910.134. The following paragraphs discuss each of these revisions.

(1) Updating DOT Regulations Referenced in § 1910.134(i)(4)(i)

This provision of the Respiratory Protection standard references the Department of Transportation (DOT) regulations in 49 CFR 173 and 178 for retesting air cylinders such as cylinders used with self-contained breathing apparatus (SCBAs). In August 2002, DOT revised its standard, which resulted in the reorganization and renumbering of its regulations for testing air cylinders. New subpart C of 49 CFR 180 now specifies the general DOT requirements for requalifying air cylinders; these requirements replicate the requirements in former 49 CFR parts 173 and 178 for requalifying air cylinders. In their comments supporting this revision, 3M (ID 0154.1) agreed "that the proposed wording will clarify the requirements of the Respiratory Protection standard by accurately referring to the appropriate DOT standard." OSHA did not receive comments opposing this update and, therefore, is revising the language in § 1910.134(i)(4)(i) by referencing the new DOT standard for cylinder testing at 49 CFR 180 and, accordingly, will update this reference as proposed.

(2) Updating the NIOSH Respirator-Certification Requirement in § 1910.134(i)(9)

Paragraph (i)(9) of OSHA's Respiratory Protection standard, § 1910.134, required the employer to use breathing-gas containers marked in accordance with the NIOSH respirator-certification standard at 42 CFR 84. NIOSH reported to OSHA that there is confusion in the regulated community as to how this provision applied to after-market cylinders, and in its comments to OSHA's Advisory Committee on Construction Safety and Health (ACCSH) (Ex. 12.2, 12/11/2009) requested that OSHA revise the provision. The purpose of this modification is to clarify that after-market cylinders not manufactured under the quality-assurance program incorporated as part of the NIOSH approval process for SCBA are not acceptable for use. OSHA's proposed revision read, "The employer shall use only the respirator manufacturer's NIOSH-approved breathing-gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84."

Dräger (ID 0150.1) supported the revision, stating that there are "many aftermarket components that * * * when used either cause the NIOSH certification to become void until the respirator is returned to its approved configuration or that can cause the respirator to function improperly." Dräger (ID 0150.1) also listed a series of cylinder assembly problems that may arise as a result of the use of unapproved components.

3M (ID 0154.1) stated that this issue is a concern for all after-market

respirator parts (e.g., breathing hoses) and does not involve only air cylinders, but also is relevant to other types of respirators (not just SCBAs). However, 3M (ID 0154.1) also believed that other paragraphs of the Respiratory standard already address this subject adequately and, therefore, the revised language was duplicative and unnecessary. Specifically, 3M noted that § 1910.134(d)(1)(ii) addresses this issue adequately; this provision states: "The employer shall select a NIOSH-certified respirator. The respirator shall be used in compliance with the conditions of its certification." 3M believes that "used in compliance with the conditions of its certification" addresses the issue of using parts manufactured, marked and maintained in accordance with the quality-assurance provisions of NIOSH approval for all respirators, including SCBAs, in 42 CFR 84. Furthermore, 3M believes that § 1910.134(h)(4)(i) and (ii) provide adequate control over use of after-market cylinders. These provisions state: "Repairs or adjustments to respirators are to be made only by persons appropriately trained to perform such operations and shall use only the respirator manufacturer's NIOSH-approved parts designed for the respirator," and "Repairs shall be made according to the manufacturer's recommendations and specifications for the type and extent of repairs to be performed;"

OSHA agrees with 3M that the current language in paragraphs (d) and (h) of the Respiratory Protection standard adequately covers after-market SCBA cylinders not manufactured in accordance with the quality-assurance program required for NIOSH approval. OSHA also found the current language sufficient for compliance purposes. Nevertheless, OSHA notes that neither paragraph (d) nor (h) specifically refers to after-market SCBA cylinders and, despite the language in the existing requirements, users still have questions with respect to the use of after-market SCBA cylinders. Therefore, OSHA believes that adding clarification by means of one additional sentence may alleviate any confusion and enhance worker protection by making clear that, when employers use after-market SCBA cylinders, they must use cylinders manufactured in accordance with NIOSH requirements. Accordingly, OSHA is revising § 1910.134(i)(9) to read: "The employer shall use only the respirator manufacturer's NIOSH-approved breathing-gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR 84."

(3) Appendix C to § 1910.134

OSHA is revising question #2a in the OSHA Medical Evaluation Questionnaire, Appendix C, Part A, Section 2, of its Respiratory Protection standard, § 1910.134, which describes a particular medical condition. OSHA believes that the use of the term "fits" is outdated, unnecessary, and offensive. OSHA determined that this revision to the questionnaire will have no effect on administration of, or responses to, the questionnaire. OSHA received no comments opposing this revision. Therefore, OSHA is deleting the word "fits," leaving only the word "seizures" to describe the medical condition.

(4) Appendix D to § 1910.134

To clarify that Appendix D of the Respiratory Protection standard (§ 1910.34) is mandatory, OSHA is removing paragraph (o)(2) from the standard, and revising paragraph (o)(1) of the standard to include Appendix D among the mandatory appendices. As discussed in the ANPR and the proposal, this revision to paragraph (o)(1) will reduce public confusion by clarifying the Agency's purpose regarding Appendix D when it published the Respiratory Protection standard on January 8, 1998 (63 FR 1152): Namely that Appendix D is mandatory. In this regard, paragraph (c)(2)(i), the introductory text to paragraph (k), and paragraph (k)(6) of the Respiratory standard provided evidence of this purpose. These provisions mandate that employers provide voluntary respirator users with the information contained in Appendix D. Additionally, the title of Appendix D states that it is mandatory.

In the proposal, OSHA solicited comments from stakeholders regarding whether employers understood these provisions, if the information was appropriate, and whether clarifying that Appendix D was mandatory would increase the burden on employers. The BCTD, AFL–CIO (ID 0156.1) supported these revisions stating that:

> The proposed changes, which would clearly list Appendix D as a mandatory appendix and eliminate regulatory language that suggests otherwise, will not impose any new obligations on employers, but will instead simply remove a source of confusion and thereby ensure that employees are provided with the information they need to use respirators properly.

The AFL–CIO (ID 0160.1) also supported the revision, and stated that the changes would ensure:

> [T]hat the information contained in Appendix D is required to be provided to an employee whenever they voluntarily wear respirators. By making it clear that Appendix D is mandatory, doing so now makes it conform with paragraph (k)(6) which requires that the information in the appendix shall be provided by the employer to workers who wear respirators when their use is not required by the respirator standard or by the employer. This proposed change eliminates any confusion that may occur about the mandatory nature of Appendix D in these circumstances and further enhances worker protection with the information contained in the appendix.

3M (ID 0154.1) also supported the removal of paragraph (o)(2) from the standard. However, 3M expressed concern regarding:

> [W]hether the general reader will note that the title of the appendix, "Appendix D to Sec. 1910.134 (Mandatory) Information for Employees Using Respirators When Not Required Under the Standard" is referring to voluntary use of respirators. Voluntary use of respirators is a term understood by most readers of the standard. 'Information for Employees Using Respirators When Not Required Under the Standard' may not be clear to the general reader that the title refers only to voluntary use. In other words, we believe 'voluntary use' to be plain English compared to 'Information for Employees Using Respirators When Not Required Under the Standard.'

3M also suggests that OSHA modify the title of the appendix to "Mandatory When Voluntary Use Is Allowed," claiming that the term "voluntary use" is clearer to an employer than the phrase "When Not Required Under the Standard."

OSHA decided to delete the confusing and inconsistent language in paragraph (o)(2), and revised the language in paragraph (o) of § 1910.134 to state, "Compliance with Appendix A, Appendix B–1, Appendix B–2, Appendix C, and Appendix D to this section is mandatory." Regarding 3M's recommendation to change the title of Appendix D, OSHA disagrees with 3M that the title proposed by 3M is clearer than the current title because the current title makes clear that the appendix refers to use of respirators when the standard does not require employers to use them. Therefore, OSHA is retaining the current title of Appendix D in § 1910.134, which is "(Mandatory) Information for Employees Using Respirators When Not Required Under the Standard."

(5) Asbestos (§ 1915.1001)

SIP–III addresses several outdated and inconsistent provisions contained in the Agency's Asbestos standards covering general industry (29 CFR 1910), shipyards (29 CFR 1915), and

construction (29 CFR 1926). Each of these standards include a section entitled "Respirator Program," which specifies the requirements for using respiratory protection to protect workers from exposure to asbestos. In the final rulemaking to revise OSHA's Respiratory Protection standard (§ 1910.134), the Agency updated the Asbestos standards for general industry and construction so that the program requirements would be consistent with the provisions of the revised Respiratory Protection standard (see 63 FR 1285 and 1298). However, the Agency inadvertently omitted revising the respirator-program requirements specified in paragraph (h)(3)(i) of the Asbestos standard for shipyards. OSHA is revising the respirator-program requirements specified in paragraph (h)(3)(i) of the Asbestos standard for shipyards, § 1915.1001, to read the same as paragraphs (g)(2)(i) of the Asbestos standard for general industry, § 1910.1001, and (h)(2)(i) of the Asbestos standard for construction, § 1926.1101, both of which state, "The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m)." These paragraphs specify the requirements for an employer's respirator program with respect to asbestos exposure.

OSHA received no comments in opposition to this revision. 3M (ID 0154.1) supported making § 1915.001(h)(3)(i) consistent with the other asbestos standards, and did not believe it would "create additional compliance requirements."

Similarly, OSHA is removing paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(4) from the shipyard Asbestos standard at § 1915.1001, which address filter changes, washing faces and facepieces to prevent skin irritation, and fit testing, respectively. OSHA determined that this action is appropriate because paragraphs (h)(3)(ii) and (h)(3)(iii) of the Asbestos standard for shipyards duplicate of the continuing-use provisions specified in paragraph § 1910.134(g)(2)(ii).

In addition, the fit-testing requirements provided in paragraph (f) of the Respiratory Protection standard either meet or exceed the provisions specified in (h)(4) of the shipyard Asbestos standard, except that the frequency of fit-testing is different. The shipyard-employment Asbestos standard at § 1915.1001(h)(4)(ii) previously required employers to perform quantitative and qualitative fit testing "at the time of initial fitting and at least every 6 months thereafter for each employee wearing a negative-pressure respirator." The Respiratory Protection standard at § 1910.134(f)(2) requires employers to fit test employees using a tight-fitting respirator "prior to initial use of the respirator, whenever a different facepiece * * * is used, and at least annually thereafter."

By adding the reference to the § 1910.134 Respiratory Protection standard to § 1915.1001(h)(3)(i) of the shipyard Asbestos standard, OSHA incorporates the fit-testing requirements of § 1910.134(f), which include the requirement to use the OSHA-accepted qualitative fit-testing and quantitative fit-testing protocols and procedures contained in Appendix A of § 1910.134. Accordingly, the-fit testing requirements specified in Appendix C of § 1915.1001 would be redundant; therefore, OSHA is revising Appendix C from § 1915.1001 to refer to § 1910.134(f). OSHA received no comments in response to these proposed changes.

The Agency determined that these revisions will not increase employers' compliance burden, but instead will reduce the burden by providing consistency between the shipyard employment Asbestos standard and the requirements of the Asbestos standards for general industry and construction.

(6) 13 Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

In 1996, OSHA combined the 13 separate carcinogen standards into a single standard (61 FR 9242, March 7, 1996). As part of this regulatory action, the Agency replaced the requirement for use of full-facepiece, supplied-air respirators with a requirement to use half-mask particulate-filter respirators for the 13 carcinogens. However, four of these chemicals (i.e., methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone) are liquids, not particulates, and, therefore, the use of particulate-filter respirators is not appropriate to ensure the protection of workers exposed to these chemicals

Based on a recommendation by the National Institute for Occupational Safety and Health (NIOSH), OSHA proposed to revise the 13 Carcinogens standard to require the use of the most protective supplied-air respirators available, either a pressure-demand SCBA or a full facepiece supplied-air respirator with auxiliary self-contained air supply, for these four liquid carcinogens (75 FR 38652). However, OSHA invited comment on whether it "should allow the use of chemical cartridges with NIOSH-certified air-purifying half-mask respirators for these four liquid carcinogens [on condition that] employers provid[e] that the cartridges used to absorb the vapors emitted from these chemicals would have an adequate service life." (*Id.*)

In responding to the SIP–III proposal, 3M recommended that OSHA permit the use of organic-vapor chemical cartridges for the four liquid carcinogens, provided that employers implement change schedules required by paragraph (d)(3)(iii) of OSHA's Respiratory Protection standard at § 1910.134 (ID 0154.1). To support this recommendation, 3M provided information that software models are available that can determine the service life of the chemical cartridges used for each of the four carcinogens (*Id.*). Based on this information, 3M concluded that "[t]hese service life estimates and the wide availability of organic vapor cartridges indicate organic vapor cartridges are feasible options for these four chemicals" and that "[t]o require supplied air respirators based on old approval criteria appears unnecessary and burdensome for employers." (Id.)

However, 3M also acknowledged that no PELs exist for these carcinogens that could provide a basis for using the assigned protection factors (APFs) listed in § 1910.134 to determine the maximum-use concentrations for these chemicals below which employers could use half-mask negative-pressure respirators. Therefore, 3M believed that it would be "necessary for OSHA to stipulate either the minimum respirator to be used or the minimum respirator assigned protection factor required."

After reviewing 3M's submission, OSHA determined that the Agency does not have sufficient information on the performance of organic-vapor chemical cartridges with these four substances to include it as an alternative. Furthermore, as 3M acknowledged, there are no PELs available that would permit employers to determine maximum-use concentrations for the purpose of selecting the appropriate type of organic-vapor cartridge respirator, nor was sufficient information available in the rulemaking record for OSHA to provide guidance on how to select the appropriate level of negative-pressure respirator to protect employees exposed to these four carcinogens. Given these considerations, OSHA concludes that workers would only receive the requisite level of protection from a pressure-demand SCBA or a full facepiece supplied-air respirator with auxiliary self-contained air supply. Therefore, OSHA is revising § 1910.1003(c)(4)(iv) accordingly.

(7) 1, 3-Butadiene (§ 1910.1051)

OSHA is removing paragraph (m)(3) from the 1,3-Butadiene standard

§ 1910.1051, which required that employers keep fit-test records for employees who use respirators to reduce toxic exposures. The Butadiene standard is the only substance-specific standard that includes this requirement, and the provision duplicates the requirement in OSHA's Respiratory Protection standard (§ 1910.134) to maintain fit test records. Both the American Society of Safety Engineers (ID 0021.1) and 3M (ID 0154.1) supported OSHA's proposal to remove the paragraph and rely instead on the fit-testing recordkeeping requirements in § 1910.134. OSHA received no comments in opposition to this revision.

3. Subpart J

a. Definition of "Potable Water" (§ 1910.141(a)(2))

OSHA is revising the definition of the term "potable water" in the Sanitation standards for general industry at § 1910.141(a)(2), and construction at § 1926.51(a)(6), and the Field Sanitation standard for agriculture at § 1928.110(b). As explained in the NPRM, OSHA adopted the previous definition from a Public Health Service code that no longer exists. The final rule now defines potable water as "water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR 141)." The new definition will both update, and make consistent, all of the requirements for employers to provide potable water to workers.

In their comment, the AFL–CIO (ID 0160.1) stated, "We're pleased that the agency is revising this requirement to eliminate an outdated definition." A–Z Safety (ID 0149.1) asked OSHA to update all of § 1926.51 consistent with the current ANSI A10.25 Construction Sanitation standard, which addresses hand washing, water use, Portland cements, sanitary washrooms, and other sanitation requirements. Although OSHA may consider a full update of § 1926.51 in the future, the Agency did not propose such an update and, therefore, cannot update § 1926.51 in this final rulemaking. OSHA received no comments opposing these proposed revisions.

b. Washing Facilities (§ 1910.141(d))

OSHA is revising the Bloodborne Pathogens standard by removing the word "hot" from the phrase "hot air drying machines" in the definition of "handwashing facilities" at § 1910.1030(b), as proposed. This revision will permit employers to use high-velocity air blowers in the workplace. The definition previously read: "*Handwashing Facilities* means a facility providing an adequate supply of running potable water, soap, and single use towels or hot air drying machines."

When OSHA published the Bloodborne Pathogens standard, adequate non-heated, high velocity air blowers were not available. Since then, OSHA received information that current technology uses high-velocity, non-heated air, rather than hot or warm air, to dry hands. (Dyson B2B Inc; Dyson; ID 0015) Employers may still use hot-/warm-air drying machines, as well as non-heated air blowers or other air-drying machines that may become available as technology advances. OSHA is similarly revising three other Sanitation standards: The Sanitation standards for marine terminals at § 1917.127(a)(1)(iii), longshoring at § 1918.95(a)(1)(iii), and construction at § 1926.51(f)(3)(iv). OSHA received no comments in response to the proposal opposing these revisions.

4. Slings (§ 1910.184)

In 1996, the National Association of Chain Manufacturers (NACM) petitioned OSHA to adopt requirements of the then-current ANSI B30.9 standard, as it believed that the existing OSHA standard was not as safe as the ANSI standard. Based on the record developed during the SIP–III rulemaking, OSHA is updating its standards regulating the use of slings at § 1910.184 in general industry, §§ 1915.112, 1915.113, and 1915.118 in shipyard employment, and § 1926.251 in construction by removing outdated tables that specify safe working loads, and revising other provisions (e.g., §§ 1910.184(e)(6) and 1915.112) that reference the outdated tables. The load-capacity tables previously designated in these standards, based on the 1971 ANSI B30.9 standard, are now obsolete and no longer conform to the load-capacity tables of the updated ANSI B30.9 standard. The outdated tables are being replaced with a requirement that prohibits employers from loading slings in excess of the recommended safe working load as prescribed on permanently affixed identification markings. The revisions also prohibit the use of slings that do not have permanently affixed identification markings. The revisions are the same as those proposed, and no comments were received opposing these revisions.

The BCTD, AFL–CIO (ID 0156.1) supported the revisions, stating:

> [W]orker safety will be enhanced by removing from the sling standard references to outdated working-load tables and by strengthening the existing requirements that employers comply with the rated capacities specified by the slings' manufacturers. In this regard, we agree that employers must ensure that the identification markings provided by the manufacturers are affixed to the slings whenever they are in use; that in loading slings, employers must be prohibited from exceeding the load capacity indicated on the identification markings; and that any sling from which the markings have become detached must be taken out of service until new labels are obtained and affixed.

In response to OSHA's request for information regarding the use of slings (see 75 FR 38654), the BCTD, AFL–CIO stresses the following four points:

> (1) It is standard practice for manufacturers in this country to produce slings in accordance with the specifications prescribed by the ASME/ANSI B30.9 slings standard.
>
> (2) In accordance with B30.9, manufacturers affix labels to slings either by wires or chains or, in the case of synthetic slings, by sewing them into the fabric.
>
> (3) The labels provided by sling manufacturers generally list their names or trademarks, the safe load capacity, and the type of material, which is what Subpart H currently requires for slings made of alloy steel chains and synthetic webbing. *See* 29 CFR 1926.251(b)(1) and (e)(1)(i)–(iii).
>
> (4) With use, the tags and markings can become detached or damaged. However, just as employers are required to ensure that the slings themselves retain their integrity, it is important that they be required to replace tags that become detached or otherwise unreadable, so the workers loading the slings have readily accessible information about the limits of the load capacity.

OSHA determined that these revisions will eliminate duplicative, inconsistent, and outdated information, thus minimizing confusion regarding the rated capacity of any type of sling used by the employers, and also increasing worker safety. Reliance on the information marked on the sling simplifies compliance for the employers by ensuring that employers use slings with readily available, up-to-date load ratings. Consequently, OSHA is removing the previous load-capacity tables for slings from the following standards: § 1910.184 (general industry; tables N–184–1, and N–184–3 through N–184–22); § 1915.118 (shipyard employment; tables G–1 through G–5, G–7, G–8, and G–10), including references to these tables in § 1915.112 and § 1915.113; and § 1926.251 (construction; tables H–1 and H–3 through H–19). In their place, OSHA is adding identical requirements for identification markings on wire-, natural-, and synthetic-fiber rope slings in §§ 1910.184 and 1926.251, as well as for manila rope and manila-rope slings, wire rope and wire-rope slings, and

chain and chain slings in § 1915.112. The final rule provides similar requirements for shackles in § 1915.113 and § 1926.251.

In addition, OSHA is requiring that, in using the sling, employers follow the safe working-load capacity information on the identification markings affixed to slings by the sling manufacturer. Further, if the sling is missing its identification marking, consistent with the latest ASME/ANSI B30.9 standard, employers must remove the sling from service until they reaffix the identification markings.

5. Subpart T

OSHA is removing two unnecessary requirements from paragraphs (b)(3)(i) and (b)(5) of its Commercial Diving Operations standard at § 1910.440. Paragraph (b)(3)(i) required employers to retain dive-team member medical records for five years, even though the standard contains no requirement for diver medical examinations. A 1979 court decision resulted in the removal of the requirement to provide diver medical examinations (formerly located at § 1910.411). This revision will merely remove the corresponding medical recordkeeping requirement from the standard. Paragraph (b)(5) consists of two provisions—paragraphs (5)(i) and (ii). Paragraph (5)(i) requires successor employers to receive and retain all diving and medical records specified by the standard, while paragraph (5)(ii) requires employers to forward these diving and medical records to the National Institute for Occupational Safety and Health (NIOSH) in the absence of a successor employer. Neither of these requirements is necessary. The requirement in paragraph (5)(i) is unnecessary because § 1910.1020(h), referenced in paragraph (b)(4) of § 1910.440, specifies the same requirement. OSHA proposed to remove paragraph (5)(ii) as part of its effort to remove provisions from its standard that require employers to transfer records to NIOSH (see the discussion under section A.6.a below). OSHA also is correcting a typographical error in paragraph (b)(4) that refers to § 1910.20 instead of § 1910.1020.

These revisions duplicate the revisions included in the proposed rule. OSHA received no comments on any of these proposed changes.

6. Subpart Z

OSHA is deleting the requirements to transfer records to the National Institute for Occupational Safety and Health (NIOSH) for 15 substance-specific standards in subpart Z, as well as from the standard that regulates access to employee exposure and medical records (§ 1910.1020). The following paragraphs also describe changes to OSHA's general industry and construction Lead standards, and to OSHA's Laboratories standard. OSHA received no comments in opposition to these proposed changes.

a. Transfer of Exposure and Medical Records to NIOSH

OSHA proposed removing provisions in its substance-specific standards that require employers to transfer exposure and medical records to NIOSH. Most of OSHA's existing substance-specific standards, as well as the Access to Employee Exposure and Medical Records standard at § 1910.1020, required employers to transfer specified medical and exposure records to NIOSH when an employer ceased to do business and left no successor, when the required period for retaining the records expired, or when the employer terminates a worker's employment (including retirement or death).

NIOSH provided the following testimony at an ACCSH meeting in December, 2009:

> NIOSH believes that at the time the records transfer requirements were incorporated into the OSHA standards, it was somewhat naively believed that the records would provide a valuable research resource. Clearly, however, this has not been the case for a number of reasons. Based on our experience over the past 30 years, NIOSH believes that the significant costs associated with the records transfer requirements cannot be justified in light of the complete lack of scientific utility of the records. (OSHA Docket No.: OSHA–2009–0030; ID 0025.)

As a result, OSHA is removing or revising the record-transfer requirements, as appropriate, from the following standards:

- Asbestos—§§ 1910.1001(m)(6)(ii), 1915.1001(n)(8)(ii), and 1926.1101(n)(8)(ii);
- 13 Carcinogens (4–Nitrobiphenyl, etc.)—§ 1910.1003(g)(2)(i);
- Vinyl Chloride—§ 1910.1017 (m)(3);
- Inorganic Arsenic—§ 1910.1018 (q)(4)(ii) and (iii);
- Access to Employee Exposure and Medical Records—§ 1910.1020(h)(3) and (h)(4);
- Lead—§§ 1910.1025(n)(5)(ii) and (iii) and 1926.62(n)(6)(ii) and (iii);
- Benzene—§ 1910.1028(k)(4)(ii);
- Coke Oven Emissions—§ 1910.1029(m)(4)(ii) and (iii);
- Bloodborne Pathogens—§ 1910.1030(h)(4)(ii);
- Cotton Dust—§ 1910.1043(k)(4)(ii) and (iii);
- 1,2 Dibromo-3-Chloropropane—§ 1910.1044(p)(4)(ii) and (iii);
- Acrylonitrile—§ 1910.1045(q)(5)(ii) and (iii);
- Ethylene Oxide—§ 1910.1047(k)(5)(ii);
- Methylenedianiline—§§ 1910.1050(n)(7)(ii) and 1926.60(o)(8)(ii); and
- 1,3-Butadiene—§ 1910.1051(m)(6)(i).

In addition, OSHA is removing paragraph (b)(5)(ii) from § 1910.440 (Recordkeeping requirements) of its standards for Commercial Diving Operations; this provision required employers to transfer diving medical records to NIOSH in the event that no successor employer was available.

b. Trigger Levels in the Lead Standards at §§ 1910.1025 and 1926.62

OSHA's Lead standards for general industry and construction at §§ 1910.25 and 1926.62, respectively, require the employer to initiate specific actions when employee exposures to airborne lead levels or workers' blood-lead levels reach defined thresholds. For airborne exposure, the permissible exposure limit (PEL) and action level for lead serve as triggers for determining the minimum frequency of exposure monitoring. The blood-lead level serves as a trigger for additional blood-lead testing, as well as for medical-removal protection and return to work after medical removal.

In the NPRM, OSHA proposed to modify the language in several provisions that rely on the use of airborne exposure and blood-lead triggers to rectify inconsistencies both within and between the general industry and construction rules. Previously, these rules triggered various requirements when airborne exposures or blood-lead levels *exceeded* an action level. For example, paragraph (j)(1)(i) of the general industry rule (§ 1910.1025) previously required the employer to institute a medical-surveillance program "for all employees who are or may be exposed *above* the action level * * *." [Emphasis added.] OSHA proposed to change the language in this and other provisions to make clear that exposures or blood-lead levels *at or above* the applicable action level trigger the requirements. Similarly, both the general industry and construction rules previously permitted the employer to return an employee to work following medical removal when two consecutive blood-lead tests show blood-lead levels *at or below* the action level of 40 μg/dl. OSHA proposed to change this language to permit return to work when blood-lead levels are *below* the action level.

In the final rule, OSHA is, with one exception, revising the provisions in the

lead standard as proposed, and Table 1 below shows these changes for the general industry rule, and Table 2 below shows them for the construction rule. These revisions make consistent parallel requirements in the general industry and construction lead standards, thus reducing potential confusion. In addition, triggering exposure monitoring when airborne exposures are at or above the action level is consistent with use of the action level in most other substance-specific standards to establish monitoring requirements.

The one exception to the proposed changes involves paragraph (d)(6)(iii) of the general industry rule, which requires employers to conduct exposure monitoring at least quarterly when initial monitoring reveals worker exposures *above* the PEL. OSHA proposed to change the provision to require quarterly monitoring when exposures were *at or above* the PEL. However, since issuing the proposed rule, OSHA determined that this change would result in paragraph (d)(6)(iii) being inconsistent with the same provision of the lead in construction rule (at § 1926.62(d)(6)(iii)), as well as with several other substance-specific standards (see, for example, Chromium (VI) at § 1910.1026(d)(2)(iv); Benzene at § 1910.1028(e)(3)(ii); Asbestos at § 1910.1001(d)(3)).

Stakeholders supported the proposed revisions. The BCTD, AFL–CIO (ID 0156.1) stated, "The language changes set forth in Tables 1 and 2 (Fed. Reg. at 28655–56)—which will set all triggers 'at or above' a specified level—will eliminate confusion about when employers must act." Similarly, the AFL–CIO (ID 0160.1) indicated these revisions "will not only eliminate confusing inconsistencies but will also properly initiate certain protective actions at the appropriate triggering level of airborne concentration of lead without adding any additional obligations on employers." Furthermore, the State of California Department of Public Health (ID 0161.1–.5) submitted a series of additional documents in support of the change to this language. OSHA received no comments opposing these revisions.

TABLE 1—§ 1910.1025 GENERAL INDUSTRY

Previous language	Final rule language
§ 1910.1025(d)(6)(iii)	
If the initial monitoring reveals that employee exposure is **above** the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.	No change.
§ 1910.1025(j)(1)(i)	
The employer shall institute a medical surveillance program for all employees who are or may be exposed **above** the action level for more than 30 days per year.	The employer shall institute a medical surveillance program for all employees who are or may be exposed **at or above** the action level for more than 30 days per year.
§ 1910.1025(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level **exceeds** the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is **at or above** the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1910.1025(k)(1)(i)(B)	
The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 ug/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level **at or below** 40 ug/100 g of whole blood.	The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 ug/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level **below** 40 ug/100 g of whole blood.
§ 1910.1025(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 60 ug/100 g, or due to an average blood lead level at or above 50 ug/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is **at or below** 40 ug/100 g of whole blood.	For an employee removed due to a blood lead level at or above 60 ug/100 g, or due to an average blood lead level at or above 50 ug/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is **below** 40 ug/100 g of whole blood.

TABLE 2—§ 1926.62 CONSTRUCTION

Previous language	Final rule language
§ 1926.62(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level **exceeds** the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is **at or above** the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1926.62(j)(2)(iv)(B)	

TABLE 2—§ 1926.62 CONSTRUCTION—Continued

Previous language	Final rule language
The employer shall notify each employee whose blood lead level **exceeds** 40 ug/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.	The employer shall notify each employee whose blood lead level is **at or above** 40 ug/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.
§ 1926.62(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 50 ug/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is **at or below** 40 ug/dl.	For an employee removed due to a blood lead level at or above 50 ug/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/dl.

c. Occupational Exposure to Hazardous Chemicals in Laboratories (§ 1910.1450)

OSHA is revising a statement in the non-mandatory Appendix A of the standard that regulates occupational exposure to hazardous chemicals in laboratories at § 1910.1450. Specifically, OSHA is revising the warning statement regarding what action employers should take in the event an employee ingests hazardous chemicals. The purpose of the statement is to provide guidance to employers on developing a chemical-hygiene plan. The previous text recommended that when an employee ingests a hazardous chemical, responders to the incident should "[e]ncourage the victim to drink large amounts of water."

As explained in the NPRM, OSHA recognizes that, in some poisoning instances, consuming large amounts is contraindicated. Additionally, OSHA acknowledges that some labels on chemical products provide warning language such as "Do not give anything by mouth—Contact medical advice immediately." Based on these conflicting warnings, OSHA is revising the language of Appendix A to read, "This is the one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately." OSHA received no comments in response to this proposed change.

B. Revisions to the Standards for Shipyard Employment (29 CFR 1915)

This section identifies and describes the revisions that apply to Shipyard Employment (29 CFR part 1915).

1. Appendix A of Subpart B

OSHA's subpart B of 29 CFR 1915, which covers confined and enclosed spaces and other dangerous atmospheres, includes a definition of "hot work" at § 1915.11 that reads as follows:

> [A]ny activity involving riveting, welding, burning, and the use of power-activated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit [LEL] of a flammable or combustible substance.

Subpart B also includes a non-mandatory Appendix A titled "Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres" that provides an example of an operation that OSHA does not consider to be hot work as defined by § 1915.11. This example reads as follows: "Abrasive blasting of the hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel." OSHA proposed to add the word "external" to this example such that it only refers to abrasive blasting of an "external hull." OSHA proposed this change to indicate that the example applies only to abrasive-blasting work performed on the outside of a vessel. To ensure that the regulated community fully understands this exception, OSHA is making a minor revision to the proposed language. With this minor revision, the exception reads, "Abrasive blasting of the external surface of the vessel (the hull) for paint preparation does not necessitate pumping and cleaning the tanks of the vessel." By implication, the definition of hot work under § 1915.11 generally would cover only abrasive blasting performed on the interior of the hull. Therefore, OSHA is amending Appendix A as proposed, with the minor, non-substantive revision noted above. OSHA received no comments in response to the proposed change.

2. §§ 1915.112, 1915.113, and 1915.118

As discussed above in section A.4, OSHA is revising and updating the slings provisions of § 1915.112 (Ropes, chains and slings), paragraph (a) of § 1915.113 (Shackles and hooks), and § 1915.118 (Tables).

3. § 1915.154—Respiratory Protection

As discussed in section A.2.b(2) above, the revision to Appendix C of the Respiratory Protection standard at § 1910.134, regarding removal of training certification record requirements, will also affect shipyard employment through the Respiratory Protection standard at § 1915.154.

4. § 1915.1001—Asbestos

As discussed above in section A.2.b(5), the revision to § 1915.1001, Asbestos, requires employers to institute a respiratory-protection program in accordance with § 1910.134, to be consistent with changes made to the construction and general industry Asbestos standards in the 1998 revision of the Respiratory Protection standard.

C. Revisions to the Standards for Marine Terminals (29 CFR 1917)

1. § 1917.2—Definitions

OSHA is adding a definition for the term "ship's stores" in § 1917.2. Five provisions in 29 CFR 1910, 1917, and 1918 use the term "ship's stores." However, OSHA has no definition of the term in any of these parts. OSHA uses the term in the definition of "longshoring operation" in §§ 1910.16(c)(1) and 1918.2; in the definition of "vessel cargo handling gear" in § 1918.2; in the scope and application section of the Marine Terminal standard at § 1917.1(a); and in § 1917.50(j)(3) (exceptions to the gear-certification requirements).

In a directive published on May 23, 2006 (CPL 02–00–139), OSHA defined the term as "materials which are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel; or for the safety or comfort of the vessel's passengers or crew." The definition in the directive is similar to the U.S. Coast Guard definition at 46 CFR 147. OSHA determined that the definition used in the directive is appropriate, and, therefore, incorporated it in the definitions section of § 1917.2, which will clarify the provisions that use the term "ships stores." OSHA received no comments on this proposed revision.

2. § 1917.127—Sanitation

As discussed above in section A.3.b, OSHA is revising and updating the sanitation provisions in paragraph (a)(1)(iii) of § 1917.127 by removing the word "warm" from the phrase "warm air blowers." This revision will allow employers to use a variety of non-heated air-drying devices as technology advances and improves.

D. Revisions to the Standards for Longshoring (29 CFR 1918)

1. § 1918.2—Definitions

As discussed in section C.1 above, OSHA is adding a definition in § 1918.2 for the term "ship's stores" because several provisions of this part use the term without any clear definition of what it means. OSHA received no comments on this proposed revision.

2. § 1918.95—Sanitation

As discussed above in section A.3.b, OSHA revised and updated the sanitation provisions in paragraph (a)(1)(iii) of § 1918.95 by removing the word "warm" from the phrase "warm air blowers." This revision will allow employers to use a variety of mechanical hand-drying techniques as technology advances and improves.

E. Revisions to the Standards for Gear Certification (29 CFR 1919)

1. §§ 1919.6, 1919.11, 1919.12, 1919.15, and 1919.18

OSHA is updating §§ 1919.6(a)(1), 1919.11(d), 1919.12(f), 1919.15(a), and 1919.18(b) to require employers to inspect a vessel's cargo-handling gear as recommended by International Labor Organization (ILO) Convention 152. This revision requires employers to test and thoroughly examine gear before initial use; thoroughly examine gear every 12 months thereafter; and retest and thoroughly examine the gear every five years. This revision is consistent with current ILO Convention 152. The previous standards, based on outdated ILO Convention 32, required testing and examination every four years. OSHA believes these revisions represent the usual and customary practice of the maritime industry and will reduce employers' compliance burden. These revisions also make 29 CFR 1919 standards for gear certification consistent with the existing requirements of the Longshoring standard at § 1918.11(a). OSHA received no comments on the proposed revisions.

F. Revisions to the Construction Standards (29 CFR 1926)

1. Subpart D

a. § 1926.51(a)(6)

As discussed above in section A.3.a, OSHA revised § 1926.51, Sanitation, by updating the definition of the term "potable water." OSHA adopted the previous definition from a Public Health Service code that no longer exists. The new definition will update and eliminate an outdated provision, as well as promote consistency among the OSHA sanitation standards.

b. § 1926.51(f)(3)

As discussed in section A.3.b above, OSHA revised the sanitation provisions in paragraph (f)(3)(iv) of § 1926.51 by removing the word "warm" from the term "warm air blowers." This revision will allow employers to use a variety of mechanical hand-drying techniques as technology advances.

c. § 1926.60

As discussed above in section A.6.a, OSHA removed paragraph (o)(8)(ii) from § 1926.60 (Methylenedianiline (MDA)), which required employers to transfer certain employee medical and exposure records to NIOSH. In addition, OSHA is amending paragraph (o)(8) to replace the existing cross-reference to § 1926.33(h) with a more direct cross-reference to § 1910.1020(h), Access to Employee Exposure and Medical Records.

d. § 1926.62

(1) As discussed in section A.6.b above, OSHA revised the trigger levels provided in various paragraphs of § 1926.62 at which employers must initiate specific actions to protect workers exposed to lead. These revisions to the trigger level change the terms "exceeds" and "above" to "at or above," and, similarly, change the term "at or below" to "below." The consistent use of these terms across OSHA's various substance-specific standards will improve compliance and result in a clear understanding of these requirements.

(2) As discussed above in section A.6.a, OSHA removed paragraphs (n)(6)(ii) and (iii) from § 1926.62, which required employers to transfer certain employee medical and exposure records to NIOSH. In addition, OSHA is amending paragraph (n)(6)(ii) to replace the existing cross-reference to § 1926.33(h) with a more direct cross-reference to § 1910.1020(h), Access to Employee Exposure and Medical Records.

2. Subpart H

As discussed in section A.4 above, OSHA revised and updated the slings requirements at § 1926.251 (Rigging equipment for material handling). OSHA added the requirement that employers use only slings that have identification markings. The final rule provides similar protection for shackles.

3. Subpart Z

a. Asbestos (§ 1926.1101)

OSHA is revising (n)(7)(ii) and (n)(7)(iii) and (n)(8)(ii) in the following manner:

(1) OSHA is revising the references to § 1926.33 in paragraphs (n)(7)(ii), (n)(7)(iii), and (n)(8) of § 1926.1101 to more directly refer to § 1910.1020, Employee Access to Exposure and Medical Records. OSHA originally proposed to only correct errors in these paragraphs and cross-reference to § 1926.33, which is a note requiring employers to comply with § 1910.1020. OSHA received no comments on the proposed correction; however, OSHA believes that including a direct reference to § 1910.1020 will further clarify these provisions.

(2) As discussed in section A.6.a above, OSHA is removing paragraph (n)(8)(ii), from § 1926.1101, which specifies that employers must transfer employee medical and exposure records to NIOSH.

b. Cadmium (§ 1926.1127)

(1) As discussed above in section A.2.a, OSHA is removing and reserving paragraph (n)(4) of § 1926.1127, which requires employers to certify training records. OSHA does not believe that the training-certification records required by this provision provide a safety or health benefit sufficient to justify the burden and cost to employers.

(2) OSHA is revising the reference to § 1926.33 in paragraph (n)(6) of § 1926.1127 to more directly refer to § 1910.1020, Employee Access to Exposure and Medical Records. OSHA originally proposed to only correct an incorrect reference to § 1926.33(h) in this paragraph and cross-reference to § 1926.33, which is a note requiring employers to comply with § 1910.1020. OSHA received no comments on the proposed correction; however, OSHA believes that including a direct reference to § 1910.1020 will further clarify this provision.

G. Revisions to the Agriculture Standards (29 CFR 1928)

Subpart I (General Environmental Controls*)*

As discussed above in section A.3.a, OSHA revised § 1928.110(b) by updating the definition of the term "potable water." OSHA adopted the previous definition from a Public Health Service code that no longer exists. The new definition will update and eliminate an outdated provision, as well as promote consistency among the OSHA sanitation standards.

IV. Final Economic Analysis and Regulatory Flexibility Act Certification

Overview

OSHA determined that the final standard is not an economically significant regulatory action under Executive Order (E.O.) 12866. E.O.12866 requires regulatory agencies to conduct an economic analysis of rules that meet certain criteria. The most frequently used criterion under E.O.12866 is whether the rule will impose on the economy an annual cost in excess of $100 million. This rule has no costs and will lead to $45 million per year in cost savings to regulated entities. Thus, neither the benefits nor the costs of this rule exceed $100 million. OSHA provides OMB's Office of Information and Regulatory Affairs with this assessment of the costs and benefits to conform with the emphasis in both E.O. 13563 and E.O. 12866 on the importance of quantifying both costs and benefits.

OSHA also determined that the final standard is not a major rule under the Congressional Review Act (a part of the SBREFA Act of 1996) (5 U.S.C. 801 *et seq.*), and that the rule does not have a significant impact on a substantial number of small entities and, thus, this final rule requires no regulatory flexibility analysis.

The final rule, like the proposed rule, deletes and revises a number of provisions in existing OSHA standards. OSHA believes that the final rule is technologically feasible because it reduces or removes current requirements on employers.

The Agency considered both regulatory and non-regulatory alternatives to the final revisions. Non-regulatory alternatives are not an appropriate remedy to effect these revisions because the final provisions reduce requirements or provide flexibility to employers by revising existing standards. As discussed in the Summary and Explanation section above, the Agency considered alternatives for amending several provisions. In most instances, the Agency chose to revise outdated provisions to improve clarity, as well as consistency with standards more recently promulgated by the Agency. In some instances, the final rule provides more flexibility in communicating information to employees or the Agency. The purpose of the final provisions was to reduce burden on employers, or provide employers with compliance flexibility, while maintaining the same level of protection for employees.

B. Costs and Cost Savings

1. Removing Requirements To Transfer Records to NIOSH

The Agency is deleting provisions from §§ 1910.1020(h)(3) and (4) of its standard regulating access to employee medical and exposure records that will end employers' responsibility to send specific exposure and medical records to the National Institute for Occupational Safety and Health (NIOSH). Under existing paragraph § 1910.1020(h)(3), if an employer ceases business operations without a successor, the employer must send employee exposure and medical records to NIOSH, if required to do so by a substance-specific standard. For records associated with other substances, the employer must notify the Director of NIOSH in writing three months before disposing of them. Under paragraph § 1910.1020(h)(4), an employer who regularly disposes of employee records more than 30 years old must notify the Director of NIOSH at least three months prior to disposing of records planned for disposal in the coming year.

Deleting these requirements from OSHA standards provides several sources of savings to NIOSH. In a comment to the rulemaking record (ID 0135.1), NIOSH reported that it catalogued about 170,000 employee medical and exposure records during the past 30 years. NIOSH noted that the records were of no use for research purposes, and estimated that removing the duty to collect the records would result in a savings of $2 million for long-term storage of the catalogued data. In this regard, NIOSH stated that long-term storage costs are currently $0.30/record/year, which "represents a total lifetime storage costs of more than $2,000,000." In addition, NIOSH episodically receives data from employers who are terminating business operations. These employers often fail to contact NIOSH in advance regarding the appropriateness of the records they are sending to NIOSH. NIOSH protocol requires it to keep records, even inappropriate records, until it reviews the records; NIOSH keeps unreviewed records in temporary storage. Removal of the records-transfer requirement would relieve NIOSH of receiving and temporarily storing these records.

The final rule also would save NIOSH the resources it expends on processing received data on an on-going basis. NIOSH noted that the cost of processing records range from $1.35 to $4.00 per record, but the agency did not provide comment on how many records are typically processed annually. In its analyses of the paperwork burden associated with this records-transfer requirement, OSHA estimated that employers expend 688 hours at a cost of $12,576 annually (see section VII "OMB Review Under the Paperwork Reduction Act of 1995" below). This savings also constitutes a benefit of the final rule.

2. Removing Training-Certification and Other Requirements

A second source of cost savings is removing the certification requirement for employee training under the Personal Protective Equipment (PPE) and Cadmium standards. The Agency estimates that this action will save employers, across a wide range of industries, about 1.86 million hours annually, with an estimated value of about $42.9 million (see OSHA's estimate of paperwork costs below in section VII).

The final provisions on slings require employers to use only equipment (i.e., slings and shackles) marked with safe working loads (SWL) and other rigging information. OSHA's current standards require this information for three of the five types of slings, and the Agency believes that it is industry practice for manufacturers to permanently mark or tag all slings with the requisite information. Thus, the Agency concludes that these provisions will not impose any new cost burden on affected employers. OSHA believes that having the SWL information marked on slings (instead of located in tables) would provide employers with readily available and up-to-date sling information. Even if the Agency has no information to quantify this effect to employers, OSHA believes that it will provide benefits to employers by permitting readily available and up-to-date sling information.

The final rule also relaxes the frequency of maritime rigging inspections under 29 CFR 1919 from every four years to every five years. This provision will provide a cost saving to employers. There are 1,504 quadrennial inspections per year, and each

inspection costs $560 to employers. With the new requirement of rigging inspections every five years, the total number of rigging inspections per year will be reduced by 20 percent (or by 301 inspections). This reduction will result in a cost savings of $168,560 to employers annually.

C. Summary

OSHA concludes that the final provisions of the SIP–III rulemaking do not impose any new costs on employers. Since the final rule does not impose costs of any significance on any employer, the Agency concludes that the final rule is economically feasible. The table below provides a summary of the cost savings OSHA estimates will result from the final rule.

Item	Cost savings (in millions)
NIOSH record storage (one-time savings)	$2.0
Removing requirements that employers transfer records to NIOSH (annual savings)	0.013
Removing requirements for written certification of training (annual savings)	42.90
Changing rigging inspections from every four years to every five years	0.17
Total	45.2

D. Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the final rule to determine whether these final requirements would have a significant economic impact on a substantial number of small entities. Since no employer of any size will have new costs, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

V. Federalism

OSHA reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of State law only with the expressed consent of Congress. Agencies must limit any such preemption to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as "State-Plan States." (29 U.S.C. 667). Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for occupational safety and health standards. While this final rule affects employees in every State, Section 18(c)(2) of the OSH Act permits State-Plan States and Territories to develop and enforce their own standards, provided the requirements in these standards are at least as safe and healthful as the requirements specified in this final rule.

In summary, this final rule complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this final rule would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking does not significantly limit State policy options.

VI. Unfunded Mandates

OSHA reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed in section IV ("Preliminary Economic Analysis and Regulatory Flexibility Act Certification") of this notice, the Agency determined that this final rule will not impose additional costs on any private- or public-sector entity. Accordingly, this final rule requires no additional expenditures by either public or private employers.

As noted under section VIII ("State Plans") of this notice, the Agency's standards do not apply to State and local governments except in States that elect voluntarily to adopt a State Plan approved by the Agency. Consequently, this final rule does not meet the definition of a "Federal intergovernmental mandate" (see Section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the Agency certifies that this final rule does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

VII. Office of Management and Budget Review under the Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (PRA–95), agencies must obtain Office of Management and Budget (OMB) approval for all collection of information requirements (paperwork). As a part of the approval process, agencies must solicit comment from affected parties with regard to the collection of information requirements, including the financial and time burdens estimated by the agencies for the collection of information requirement. The paperwork burden-hour estimate and cost analysis that an Agency submits to OMB is termed an "Information Collection Request" (ICR).

The Standards Improvement Project–Phase III (SIP–III) final rule removes collection of information requirements contained in 27 separate ICRs currently approved by OMB. In accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)), the SIP–III proposal solicited public comments on the proposed burden-hour and cost reduction. In conjunction with the publication of the SIP–III Notice of Proposed Rulemaking (NPRM), OSHA submitted one ICR titled "Standards Improvement Project—Phase III Notice of Proposed Rulemaking." The NPRM ICR identified each ICR, the associated OMB Control Number, ICR reference number, and the proposed reduction in burden hours, costs, and number of responses.

To better account for the burden-hour and cost reductions associated with the SIP–III final rule, the Department of Labor submitted 27 separate revised ICRs to OMB for approval. Copies of these ICRs are available at *http://www.reginfo.gov.* OSHA will publish a separate notice in the **Federal Register** that will announce the result of OMB's reviews. The Department of Labor notes that a Federal agency cannot conduct or sponsor a collection of information unless OMB approves it under the PRA–95, and the agency displays a currently valid OMB control number. Also, notwithstanding any other provision of law, no employer shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number.

The SIP–III final rule removes provisions in OSHA's substance-specific

standards that require employers to transfer worker exposure-monitoring and medical records to the National Institute for Occupational Safety and Health (NIOSH) (see Table 3 below for a list of these provisions). Many OSHA standards, including its substance-specific standards in 29 CFR part 1910, subpart Z, and 29 CFR 1910.1020 (Access to Employee Exposure and Medical Records), require employers to transfer to NIOSH medical and exposure records when: an employer ceases to do business and leaves no successor; the period for retaining the records expires; or a worker terminates employment (including retirement or death). OSHA removed these record-transfer provisions because evidence in this rulemaking record submitted by NIOSH indicates that the records serve no useful occupational safety and health research purpose (which is NIOSH's principle mission).

In addition, the final rule removes provisions requiring employers to prepare and maintain written records certifying training compliance in the following sections: (f)(4) of the general industry Personal Protective Equipment (PPE) standard (29 CFR 1910.132), paragraph (e)(4) of the shipyard employment PPE standard (29 CFR 1915.152), and paragraph (n)(4) of the general industry and construction Cadmium standards (29 CFR 1910.1027 and 29 CFR 1926.1127) (see Table 4). These provisions required employers to verify that affected workers received training as required by the standards through a written certification record that included, at a minimum, the name(s) of the workers trained, the date(s) of training, and the types of training the workers received. The Cadmium standards for general industry and construction were the only substance-specific standards that required this training documentation. OSHA removed the training requirements to reduce burden hours and costs on the employers. Effective training ensures that workers understand proper work practices, which will reduce rates of injuries and illnesses. Removing the certification requirements of these standards will not change the requirements for employers to provide effective PPE and safety training.

TABLE 3—BURDEN-HOUR AND COST REDUCTIONS FROM REMOVING REQUIREMENTS TO TRANSFER RECORDS TO NIOSH

Standard and provision	OMB control No.	ICR reference No.	Existing burden hours	Burden-hour reduction	Requested burden hours	Cost reduction *
Commercial Diving Operations—29 CFR 1910.440(b)(5)(ii)	1218–0069	200804–1218–002	205,397	−301	205,096	$5,764
Asbestos—29 CFR 1910.1001(m)(6)(ii)	1218–0133	201006–1218–003	11,933	−1	11,932	21
Asbestos—29 CFR 1915.1001(n)(8)(ii)	1218–0195	200902–1218–008	1,624	−1	1,623	22
Asbestos—29 CFR 1926.1101(n)(8)(ii)	1218–0134	200811–1218–002	4,957,808	−4	4,957,804	101
13 Carcinogens (4-Nitrobiphenyl, etc.)—29 CFR 1910.1003(g)(2)(i) and (ii)	1218–0085	200811–1218–001	1,604	−6	1,598	139
Vinyl Chloride—29 CFR 1910.1017 (m)(3)	1218–0010	200809–1218–003	712	−1	711	20
Inorganic Arsenic—29 CFR 1910.1018 (q)(4)(ii) and (iii)	1218–0104	200811–1218–003	385	−1	384	23
Access to Employee Exposure and Medical Records—29 CFR 1910.1020(h)(3)(i),(ii) and (h)(4)	1218–0065	201007–1218–004	665,009	−16	664,993	331
Lead—29 CFR 1910.1025(n)(5)(ii) and (iii)	1218–0092	200907–1218–001	1,225,255	−2	1,225,253	42
Lead—29 CFR 1926.62(n)(6)(ii) and (iii)	1218–0189	200907–1218–002	1,363,803	−1	1,363,802	22
Cadmium—29 CFR 1910.1027(n)(6)	1218–0185	200902–1218–003	92,259	0	92,259	0
Cadmium—29 CFR 1926.1127(n)(6)	1218–0186	200902–1218–002	39,331	0	39,331	0
Benzene—29 CFR 1910.1028(k)(4)(ii)	1218–0129	200911–1218–004	126,184	−1	126,183	23
Coke Oven Emissions—29 CFR 1910.1029(m)(4)(ii) and (iii)	1218–0128	200809–1218–004	52,701	−3	52,698	60
Bloodborne Pathogens—29 CFR 1910.1030(h)(4)(ii)	1218–0180	200710–1218–006	14, 059,435	0	14,059,435	0
Cotton Dust—29 CFR 1910.1043(k)(4)(ii) and (iii)	1218–0061	200809–1218–007	35,742	−3	35,739	69
1,2 Dibromo-3-Chloropropane—29 CFR 1910.1044(p)(4)(ii) and (iii)	1218–0101	200902–1218–007	1	0	1	0
Acrylonitrile—29 CFR 1910.1045(q)(5)(ii) and (iii)	1218–0126	200809–1218–006	3,166	−3	3,163	74
Ethylene Oxide—29 CFR 1910.1047(k)(5)(ii)	1218–0108	200904–1218–001	41,487	−3	41,484	62
Formaldehyde—29 CFR 1910.1048(o)(6)(ii) and (iii)	1218–0145	201006–1218–006	327,535	−2	327,533	41
Methylenedianiline—29 CFR 1910.1050(n)(7)(ii)	1218–0184	200912–1218–015	298	−1	297	18
Methylenedianiline—29 CFR 1926.60(n)(7)(ii)	1218–0183	200912–1218–014	1,030	−1	1,029	21
1,3-Butadiene—29 CFR 1910.1051(m)	1218–0170	200905–1218–001	955	−3	952	65
Methylene Chloride—29 CFR 1910.1052(m)(5) **	1218–0179	200806–1218–001	67,362	−1	67,361	21
Occupational Exposure to Hazardous Chemicals in Laboratories—29 CFR 1910.1450(j)(2) **	1218–0131	200806–1218–002	281,419	−333	281,086	5,644
Totals			23,562,435	−688	23,561,747	12,583

* The cost estimates in this table represent program changes associated with Item 12 of the Supporting Statements.

** OSHA is not modifying the provisions in these standards containing transfer of exposure-monitoring and medical records to NIOSH since these provisions reference 29 CFR 1910.1020 rather than specify directly any transfer requirements. However, the ICRs for these standards accounted for burden hours and costs for these provisions. Therefore, OSHA included these provisions in this table.

TABLE 4—BURDEN-HOUR AND COST REDUCTIONS FROM REMOVING TRAINING-CERTIFICATION REQUIREMENTS

Standard and provision	OMB Control No.	ICR reference No.	Existing burden hours	Burden-hour reduction	Requested burden hours	Cost reduction *
Personal Protective Equipment—29 CFR 1910.132(f)(4)	1218–0205	201001–1218–002	3,552,171	−1,855,180	1,696,991	$42,743,347
Cadmium—29 CFR 1910.1027(n)(4)	1218–0185	200902–1218–003	92,259	−1,226	91,033	26,371
Personal Protective Equipment (PPE)—29 CFR 1915.152(e)(4)	1218–0215	200911–1218–001	2,827	−2,776	51	48,664
Cadmium—29 CFR 1926.1127(n)(4)	1218–0186	200902–1218–002	39,331	−2,100	37,231	34,218
Totals			3,686,588	−1,861,282	1,825,306	42,861,600

* The cost estimates in this table represent program changes associated with Item 12 of the Supporting Statements.

As a result of removing the requirements for employers to transfer records to NIOSH, and to develop and maintain certification records, OSHA is requesting an overall program-change reduction of 1.86 million hours to its total burden-hour inventory of 67.49 million, for a revised total of 65.63 million hours. Table 5 below summarizes the total burden hour reduction. This translates into a reduction of $42,874,183 ($42,861,600 from removal of the training-certification requirements, and $12,583 since employers will no longer be required to transfer records to NIOSH). Finally, there will be a small reduction in costs of $2,992 since employers will no longer incur mailing expenses to send records to NIOSH.

TABLE 5—BURDEN-HOUR REDUCTIONS RESULTING FROM THE STANDARDS IMPROVEMENT PROJECT—PHASE III FINAL RULE

Action in final rule	Existing burden hours	Burden-hour reduction	Requested burden hours
Removing the Requirements to Transfer Records to NIOSH (Table 1)	23,562,435	−688	23,561,747
Removing Training-Certification Requirement (Table 2)	3,686,588	−1,861,282	1,825,306
Totals	27,249,023	−1,861,970	25,387,053

VIII. State Plans

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 27 States and U.S. Territories with their own OSHA-approved occupational safety and health plans ("State-Plan States") must amend their standards consistent with the new standard or amendment, or show OSHA why such action is unnecessary, e.g., because an existing State standard covering this area is "at least as effective" as the new Federal standard or amendment. (29 CFR 1953.5(a).) The State standard must be at least as effective as the Federal rule, be applicable to both the private and public (State and local government employees) sectors, and completed within six months of the promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State-Plan States are not required to amend their standards, although the Agency may encourage them to do so.

The 27 States and U.S. Territories with OSHA-approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

OSHA concludes that this final rule, by revising confusing, outdated, duplicative, or inconsistent standards, will increase the protection afforded to employees while reducing the compliance burden of employers. Therefore, States and Territories with approved State Plans must adopt comparable amendments to their standards within six months of the promulgation date of this rule unless they demonstrate that such amendments are not necessary because their existing standards are at least as effective in protecting workers as this final rule.

List of Subjects

29 CFR Part 1910

Abrasive blasting, Carcinogens, Commercial diving, Egress, Hazard assessment, Hazardous substances, Incorporation by reference, Medical records, Occupational safety and health, Personal protective equipment, Sanitation, Slings, Training, Training certification records, and Respiratory protection.

29 CFR Parts 1915, 1917, 1918, and 1919

Confined spaces, Dangerous atmospheres, Gear certification, Hazard assessment, Hazardous substances, Hot work, Occupational safety and health, Personal protective equipment, Sanitation, Shackles, Slings.

29 CFR Part 1926

Construction, Hazardous substances, Medical records, Occupational safety and health, Potable water, Shackles, Slings.

29 CFR Part 1928

Agriculture, Sanitation, Potable water.

IX. Authority and Signature

David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this final rule pursuant to 29 U.S.C. 653, 655, and 657, 33 U.S.C. 941, 40 U.S.C. 3701 *et seq.,* Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR 1911.

Signed at Washington, DC, on May 26, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

X. The Final Standard

For the reasons discussed in the preamble, the Occupational Safety and Health Administration is amending 29 CFR parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928 as set forth below:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—[Amended]

■ 1. The authority citation for subpart A continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355), as applicable.

Sections 1910.7 and 1910.8 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. Amend § 1910.6 as follows:

■ a. Revise the introductory text of paragraph (q).

■ a. Redesignate paragraphs (q)(25) through (q)(35) as paragraphs (q)(26) through (q)(36), and add new paragraph (q)(25).

■ b. Add a new paragraph (x).

The revisions and additions read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(q) The following material is available for purchase from the National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–7471; *telephone:* 1–800–344–35557; *e-mail: custserv@nfpa.org.*

* * * * *

(25) NFPA 101–2009, Life Safety Code, 2009 edition, IBR approved for §§ 1910.34, 1910.35, 1910.36, and 1910.37.

* * * * *

(x) The following material is available for purchase from the: International Code Council, Chicago District Office, 4051 W. Flossmoor Rd., Country Club Hills, IL 60478; *telephone:* 708–799–2300, x3–3801; *facsimile:* 001–708–799–4981; *e-mail: order@iccsafe.org.*

(1) IFC–2009, International Fire Code, copyright 2009, IBR approved for §§ 1910.34, 1910.35, 1910.36, and 1910.37.

(2) [Reserved]

Subpart E—Exit Routes and Emergency Planning

■ 3. Revise the authority citation for subpart E to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

■ 4. Revise the heading of subpart E to read as set forth above.

■ 5. In § 1910.33, revise the entry listed for § 1910.35 to read as follows:

§ 1910.33 Table of contents.

* * * * *

§ 1910.35 Compliance with Alternate Exit Route Codes.

* * * * *

■ 6. Revise the definition of the term "Occupant load" in paragraph (c) of § 1910.34 to read as follows:

§ 1910.34 Coverage and definitions.

* * * * *

(c) * * *

Occupant load means the total number of persons that may occupy a workplace or portion of a workplace at any one time. The occupant load of a workplace is calculated by dividing the gross floor area of the workplace or portion of the workplace by the occupant load factor for that particular type of workplace occupancy. Information regarding the "Occupant load" is located in NFPA 101–2009, Life Safety Code, and in IFC–2009, International Fire Code (incorporated by reference, see § 1910.6).

* * * * *

■ 7. Revise § 1910.35 to read as follows:

§ 1910.35 Compliance with alternate exit-route codes.

OSHA will deem an employer demonstrating compliance with the exit-route provisions of NFPA 101, Life Safety Code, 2009 edition, or the exit-route provisions of the International Fire Code, 2009 edition, to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37 (incorporated by reference, see section § 1910.6).

■ 8. In § 1910.36, revise the notes to paragraphs (b) and (f) to read as follows:

§ 1910.36 Design and construction requirements for exit routes.

* * * * *

(b) * * *

(3) * * *

Note to paragraph (b) of this section: For assistance in determining the number of exit routes necessary for your workplace, consult NFPA 101–2009, Life Safety Code, or IFC–2009, International Fire Code (incorporated by reference, see § 1910.6).

* * * * *

(f) * * *

(2) * * *

Note to paragraph (f) of this section: Information regarding the "Occupant load" is located in NFPA 101–2009, Life Safety Code, and in IFC–2009, International Fire Code (incorporated by reference, see § 1910.6).

* * * * *

Subpart I—[Amended]

■ 9. Revise the authority citation for subpart I to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Sections 1910.132, 1910.134, and 1910.138 of 29 CFR also issued under 29 CFR 1911.

Sections 1910.133, 1910.135, and 1910.136 of 29 CFR also issued under 29 CFR 1911 and 5 U.S.C. 553.

§ 1910.132 [Amended]

■ 10. Remove paragraph (f)(4) from § 1910.132.

■ 11. In § 1910.134, revise paragraphs (i)(4)(i), (i)(9), and (o), and question 2a in Part A, Section 2 (Mandatory) of Appendix C, to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

(i) * * *

(4) * * *

(i) Cylinders are tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 180);

* * * * *

(9) The employer shall use only the respirator manufacturer's NIOSH-approved breathing-gas containers,

marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84.

* * * * *

(o) Appendices. Compliance with Appendix A, Appendix B–1, Appendix B–2, Appendix C, and Appendix D to this section are mandatory.

* * * * *

Appendix C to § 1910.134: * * *

* * * * *

Part A. Section 2. * * *

* * * * *

2. * * *

a. Seizures: Yes/No

* * * * *

Subpart J—[Amended]

■ 12. Revise the authority citation for subpart J to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355) as applicable; and 29 CFR 1911.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR 1911.

■ 13. Revise the definition of "Potable water" in paragraph (a)(2), and revise paragraph (d)(2)(iv) of § 1910.141 to read as follow:

§ 1910.141 Sanitation.

(a) * * *

(2) * * *

Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR 141).

* * * * *

(d) * * *

(2) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

Subpart N—[Amended]

■ 14. Revise the authority citation for subpart N to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355) as applicable; and 29 CFR 1911.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

■ 15. Amend § 1910.184 as follows:

■ a. Add new paragraphs (c)(13) and (c)(14).

■ b. Revise paragraphs (e)(6), (e)(8), (f)(1), and (h)(1).

■ c. Remove and reserve paragraphs (e)(5), (g)(6), and (i)(5).

■ d. Remove Tables N–184–1 and N–184–3 through N–184–22.

■ e. Redesignate Table N–184–2 as N–184–1.

The addition and revisions read as follows:

§ 1910.184 Slings.

* * * * *

(c) * * *

(13) Employers must not load a sling in excess of its recommended safe working load as prescribed by the sling manufacturer on the identification markings permanently affixed to the sling.

(14) Employers must not use slings without affixed and legible identification markings.

* * * * *

(e) * * *

(5) [Reserved]

(6) *Safe operating temperatures.* Employers must permanently remove an alloy steel-chain slings from service if it is heated above 1000 degrees F. When exposed to service temperatures in excess of 600 degrees F, employers must reduce the maximum working-load limits permitted by the chain manufacturer in accordance with the chain or sling manufacturer's recommendations.

* * * * *

(8) Effect of wear. If the chain size at any point of the link is less than that stated in Table N–184–1, the employer must remove the chain from service.

* * * * *

(f) *Wire-rope slings*—(1) *Sling use.* Employers must use only wire-rope slings that have permanently affixed and legible identification markings as prescribed by the manufacturer, and that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

* * * * *

(g) * * *

(6) [Reserved]

* * * * *

(h) *Natural and synthetic fiber-rope slings*—(1) *Sling use.* Employers must use natural and synthetic fiber-rope slings that have permanently affixed and legible identification markings stating the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(i) * * *

(5) [Reserved]

* * * * *

Subpart T—[Amended]

■ 16. Revise the authority citation for subpart T to read as follows:

Authority: 29 U.S.C. 653, 655, 657; 40 U.S.C. 333; 33 U.S.C. 941; Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355) as applicable, and 29 CFR 1911.

■ 17. Remove and reserve paragraphs (b)(3)(i) and (b)(5), and revise paragraph (b)(4), of § 1910.440 to read as follows:

§ 1910.440 Recordkeeping requirements.

* * * * *

(b) * * *

(3) * * *

(i) [Reserved]

* * * * *

(4) After the expiration of the retention period of any record required to be kept for five (5) years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer also shall comply with any additional requirements set forth in 29 CFR 1910.1020(h).

(5) [Reserved]

Subpart Z—[Amended]

■ 18. Revise the authority citation for subpart Z to read as follows:

Authority: 29 U.S.C. 653, 655, and 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable, and 29 CFR 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3, but not under 29 CFR 1911, except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 40 U.S.C. 3704 and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106–430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 533.

■ 19. Amend § 1910.1001 by removing paragraph (m)(6)(ii), and redesignating paragraph (m)(6)(i) as paragraph (m)(6).

■ 20. Amend § 1910.1003 by revising paragraphs (c)(4)(iv) and (g)(2)(i) to read as follows:

§ 1910.1003 13 Carcinogens (4-nitrobiphenyl, etc.).

* * * * *

(c) * * *

(4) * * *

(iv) Employers must provide each employee engaged in handling operations involving the carcinogens 4-Nitrobiphenyl, alpha-Naphthylamine, 3,3′-Dichlorobenzidine (and its salts), beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, 2-Acetylaminofluorene, 4-Dimethylaminoazo-benzene, and N-Nitrosodimethylamine, addressed by this section, with, and ensure that each of these employees wears and uses, a NIOSH-certified air-purifying, half-mask respirator with particulate filters. Employers also must provide each employee engaged in handling operations involving the carcinogens methyl chloromethyl ether, bis-Chloromethyl ether, Ethyleneimine, and beta-Propiolactone, addressed by this section, with, and ensure that each of these employees wears and uses any self-contained breathing apparatus that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus. Employers may substitute a respirator affording employees higher levels of protection than these respirators.

* * * * *

(g) * * *

(2) * * *

(i) Employers of employees examined pursuant to this paragraph shall cause to be maintained complete and accurate records of all such medical examinations. Records shall be maintained for the duration of the employee's employment.

§ 1910.1017 [Amended]

■ 21. Remove paragraph (m)(3) from § 1910.1017.

§ 1910.1018 [Amended]

■ 22. Amend § 1910.1018 by removing paragraphs (q)(4)(ii) and (q)(4)(iii), and redesignating paragraph (q)(4)(iv) as paragraph (q)(4)(ii).

§ 1910.1020 [Amended]

■ 23. Remove paragraphs (h)(3) and (h)(4) from § 1910.1020.

■ 24. Amend § 1910.1025 as follows:

■ a. Revise paragraphs (j)(1)(i), (j)(2)(ii), (j)(2)(iv), (k)(1)(i)(B), and (k)(1)(iii)(A)(*1*).

■ b. Remove paragraphs (n)(5)(ii) and (n)(5)(iii), and redesignate paragraph (n)(5)(iv) as paragraph (n)(5)(ii).

The revisions read as follows:

§ 1910.1025 Lead.

* * * * *

(j) * * *

(1) * * *

(i) The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level for more than 30 days per year.

* * * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i)(A) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level is at or above 40 µg/100 g:

(A) Of that employee's blood lead level; and

(B) That the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

(k) * * *

(1) * * *

(i) * * *

(B) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 µg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level below 40 µg/100 g of whole blood.

(iii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 60 µg/100 g, or due to an average blood lead level at or above 50 µg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 µg/100 g of whole blood;

* * * * *

■ 25. Amend § 1910.1027 by removing paragraph (n)(4), redesignating paragraphs (n)(5) and (n)(6) as paragraphs (n)(4) and (n)(5), and revising newly designated paragraph (n)(4)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(n) * * *

(4) * * *

(i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1) through (3) of this section shall be in accordance with the provisions of 29 CFR 1910.1020.

* * * * *

■ 26. Amend § 1910.1028 revising paragraph (k)(4) as follows:

§ 1910.1028 Benzene.

* * * * *

(k) * * *

(4) *Transfer of records.* The employer shall comply with the requirements involving transfer of records as set forth in 29 CFR 1910.1020(h).

* * * * *

§ 1910.1029 [Amended]

■ 27. Amend § 1910.1029 by removing paragraphs (m)(4)(ii) and (m)(4)(iii), and redesignating paragraph (m)(4)(iv) as paragraph (m)(4)(ii).

■ 28. Amend § 1910.1030 as follows:

■ a. Revise the definition of "Handwashing facilities" in paragraph (b).

■ b. Remove paragraph (h)(4)(ii) and redesignate paragraph (h)(4)(i) as paragraph (h)(4).

The revision reads as follows:

§ 1910.1030 Bloodborne pathogens.

* * * * *

(b) * * *

Handwashing facilities means a facility providing an adequate supply of

running potable water, soap, and single-use towels or air-drying machines.

* * * * *

§ 1910.1043 [Amended]

■ 29. Amend § 1910.1043 by removing paragraphs (k)(4)(ii) and (k)(4)(iii), and redesignating paragraph (k)(4)(iv) as paragraph (k)(4)(ii).

§ 1910.1044 [Amended]

■ 30. Amend § 1910.1044 by removing paragraphs (p)(4)(ii) and (p)(4)(iii), and redesignating paragraph (p)(4)(iv) as paragraph (p)(4)(ii).

§ 1910.1045 [Amended]

■ 31. Amend § 1910.1045 by removing paragraphs (q)(5)(ii) and (q)(5)(iii), and redesignating paragraph (q)(5)(iv) as paragraph (q)(5)(ii).

§ 1910.1047 [Amended]

■ 32. Amend § 1910.1047 by removing paragraph (k)(5)(ii), and redesignating paragraph (k)(5)(i) as paragraph (k)(5).

§ 1910.1050 [Amended]

■ 33. Amend § 1910.1050 by removing paragraph (n)(7)(ii), and redesignating paragraph (n)(7)(i) as paragraph (n)(7).

■ 34. Amend § 1910.1051 as follows:

■ a. Remove and reserve paragraph (m)(3).

■ Revise paragraph (m)(6) as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(m) * * *

(3) [Reserved]

* * * * *

(6) *Transfer of records.* The employer shall transfer medical and exposure records as set forth in 29 CFR 1910.1020(h).

* * * * *

■ 35. In Appendix A to § 1910.1450, revise the "ingestion" paragraph under item (a) under Section E, subsection 1, to read as follows:

§ 1910.1450 Occupational exposure to hazardous chemicals in laboratories.

* * * * *

Appendix A to § 1910.1450—National Research Council Recommendations Concerning Chemical Hygiene in Laboratories (Non-Mandatory)

* * * * *

E. * * *

1. * * *

(a) *Accidents and spills*— * * *

Ingestion: This is one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 36. Revise the authority citation for part 1915 to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable.

Section 1915.100 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

Sections 1915.120 and 1915.152 of 29 CFR also issued under 29 CFR 1911.

■ 37. In Appendix A to subpart B, revise item number 1 under the heading "Section 1915.11(b) Definition of 'Hot work'," to read as follows:

* * * * *

Appendix A to Subpart B of Part 1915—Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres

* * * * *

Section 1915.11(b) Definition of "Hot work."

* * * * *

1. Abrasive blasting of the external surface of the vessel (the hull) for paint preparation does not necessitate pumping and cleaning the tanks of the vessel.

* * * * *

■ 38. Revise paragraphs (a), (b)(1), (b)(3), (c)(1), and (c)(3) of § 1915.112 to read as follows:

§ 1915.112 Ropes, chains, and slings.

* * * * *

(a) *Manila rope and manila-rope slings.* Employers must ensure that manila rope and manila-rope slings:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as required by paragraph (a)(1) of this section.

(b) *Wire rope and wire-rope slings.* (1) Employers must ensure that wire rope and wire-rope slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (b)(1)(i) of this section.

* * * * *

(3) When U-bolt wire rope clips are used to form eyes, employers must use Table G–1 in § 1915.118 to determine the number and spacing of clips. Employers must apply the U-bolt so that the "U" section is in contact with the dead end of the rope.

* * * * *

(c) *Chain and chain slings.* (1) Employers must ensure that chain and chain slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (c)(1)(i) of this section.

* * * * *

(3) Employers must note interlink wear, not accompanied by stretch in excess of 5 percent, and remove the chain from service when maximum allowable wear at any point of link, as indicated in Table G–2 in § 1915.118, has been reached.

* * * * *

■ 39. In § 1915.113, revise paragraph (a) to read as follows:

§ 1915.113 Shackles and hooks.

* * * * *

(a) *Shackles.* Employers must ensure that shackles:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as

required by paragraph (a)(1)(i) of this section.

* * * * *

■ 40. In § 1915.118, remove Tables G–1, G–2, G–3, G–4, G–5, G–7, G–8, and G–10, and redesignate Table G–6 as Table G–1, and Table G–9 as Table G–2.

§ 1915.152 [Amended]

■ 41. Remove paragraph (e)(4) from § 1915.152.

■ 42. Amend § 1915.1001 as follows:

■ a. Revise paragraph (h)(3)(i).

■ b. Remove paragraphs (h)(3)(ii), (h)(3)(iii), (h)(4), and (n)(8)(ii).

■ c. Redesignate paragraph (h)(3)(iv) as paragraph (h)(3)(ii), and paragraph (n)(8)(i) as paragraph (n)(8).

■ d. Revise Appendix C.

The revisions read as follows:

§ 1915.1001 Asbestos.

* * * * *

(h) * * *

(3) * * *

(i) When respiratory protection is used, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b) through (d) (except paragraph (d)(1)(iii)), and (f) through (m) which covers each employee required by this section to use a respirator.

* * * * *

Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory

Employers must perform fit testing in accordance with the fit-testing requirements of 29 CFR 1910.134(f) and the qualitative and quantitative fit-testing protocols and procedures specified in Appendix A of 29 CFR 1910.134.

* * * * *

PART 1917—MARINE TERMINALS

■ 43. Revise the authority citation for part 1917 to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.29 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 44. In § 1917.2, add a definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

■ 45. Revise paragraph (a)(1)(iii) of § 1917.127 to read as follows:

§ 1917.127 Sanitation.

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

■ 46. Revise the authority citation for part 1918 to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 47. In § 1918.2, add a definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1918.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

* * * * *

■ 48. Revise paragraph (a)(1)(iii) of § 1918.95 to read as follows:

§ 1918.95 Sanitation.

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1919—GEAR CERTIFICATION

■ 49. Revise the authority citation for part 1919 to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

■ 50. Revise the introductory text of paragraph (a)(1) of § 1919.6 to read as follows:

§ 1919.6 Criteria governing accreditation to certificate vessels' cargo gear.

(a) * * *

(1) A person applying for accreditation to issue registers and pertinent certificates, to maintain registers and appropriate records, and to conduct initial, annual and quinquennial surveys, shall not be accredited unless that person is engaged in one or more of the following activities:

* * * * *

■ 51. Revise paragraph (d) of § 1919.11 to read as follows:

§ 1919.11 Recordkeeping and related procedures concerning records in custody of accredited persons.

* * * * *

(d) When annual or quinquennial tests, inspections, examinations, or heat treatments are performed by an accredited person, other than the person who originally issued the vessel's register, such accredited person shall furnish copies of any certificates issued and information as to register entries to the person originally issuing the register.

* * * * *

■ 52. Revise paragraph (f) of § 1919.12 to read as follows:

§ 1919.12 Recordkeeping and related procedures concerning records in custody of the vessel.

* * * * *

(f) An accredited person shall instruct the vessel's officers, or the vessel's operator if the vessel is unmanned, that the vessel's register and certificates shall be preserved for at least 5 years after the date of the latest entry except in the case of nonrecurring test certificates concerning gear which is kept in use for a longer period, in which event the pertinent certificates shall be retained so long as that gear is continued in use.

* * * * *

■ 53. Revise paragraph (a) of § 1919.15 to read as follows:

§ 1919.15 Periodic tests, examinations and inspections.

* * * * *

(a) Derricks with their winches and accessory gear, including the attachments, as a unit; and cranes and other hoisting machines with their accessory gear, as a unit, shall be tested and thoroughly examined every 5 years in the manner set forth in subpart E of this part.

* * * * *

■ 54. Revise paragraph (b) of § 1919.18 to read as follows:

§ 1919.18 Grace periods.

* * * * *

(b) Quinquennial requirements—within six months after the date when due;

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—[Amended]

■ 55. Revise the authority citation for subpart D to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR 1911.

Section 1926.61 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

Section 1926.62 of 29 CFR also issued under 42 U.S.C. 4853.

Section 1926.65 of 29 CFR also issued under 29 U.S.C. 655 note, and 5 U.S.C.

■ 56. Revise paragraphs (a)(6) and (f)(3)(iv) of § 1926.51 to read as follows:

§ 1926.51 Sanitation.

(a) * * *

(6) *Potable water* means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

(f) * * *

(3) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

■ 57. Amend § 1926.60 by revising paragraph (o)(8) to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

(o) * * *

(8) *Transfer of records.* The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1910.1020(h).

* * * * *

■ 58. Amend § 1926.62 as follows:

■ a. Revise paragraphs (j)(2)(ii), (j)(2)(iv)(B), and (k)(1)(iii)(A)(*1*).

■ b. Remove paragraphs (n)(6)(ii), and (n)(6)(iii).

■ c. Redesignate paragraph (n)(6)(iv) as paragraph (n)(6)(ii), and revise newly designated paragraph (n)(6)(ii).

The revisions read as follows:

§ 1926.62 Lead.

* * * * *

(j) * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) * * *

(B) The employer shall notify each employee whose blood lead level is at or above 40 µg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

(k) * * *

(l) * * *

(iii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 50 µg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 µg/dl;

* * * * *

(n) * * *

(6) * * *

(ii) The employer shall also comply with any additional requirements involving the transfer of records set forth in 29 CFR 1910.1020(h).

* * * * *

Subpart H [Amended]

■ 59. Revise the authority citation for subpart H to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 4–2010 (75 FR 55355), as applicable. Section 1926.250 also issued under 29 CFR 1911.

■ 60. Amend § 1926.251 as follows:

■ a. Revise paragraphs (a)(2), (b)(4), (c)(1), (d)(1) and (f)(1).

■ b. Add new paragraphs (c)(16) and (d)(7).

The revisions and additions read as follows:

§ 1926.251 Rigging equipment for material handling.

(a) * * *

(2) Employers must ensure that rigging equipment:

(i) Has permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed, legible identification markings, required by paragraph (a)(2)(i) of this section.

* * * * *

(b) * * *

(4) Employers must not use alloy steel-chain slings with loads in excess of the rated capacities (i.e., working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(c) * * *

(1) Employers must not use improved plow-steel wire rope and wire-rope slings with loads in excess of the rated capacities (i.e., working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(16) Wire rope slings shall have permanently affixed, legible identification markings stating size, rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, and the number of legs if more than one.

* * * * *

(d) * * *

(1) Employers must not use natural- and synthetic-fiber rope slings with loads in excess of the rated capacities (i.e., working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(7) Employers must use natural- and synthetic-fiber rope slings that have permanently affixed and legible identification markings that state the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(f) * * *

(1) Employers must not use shackles with loads in excess of the rated

capacities (i.e., working load limits) indicated on the shackle by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

Subpart Z—[Amended]

■ 61. Revise the authority citation for subpart Z to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Section 1926.1102 of 29 CFR not issued under 29 U.S.C. 655 or 29 CFR 1911; also issued under 5 U.S.C. 553.

■ 62. Amend § 1926.1101 as follows:
■ a. Remove paragraph (n)(7)(iii).
■ b. Revise paragraphs (n)(7)(ii) and (n)(8) to read as follows:

§ 1926.1101 Asbestos

* * * * *

(n) * * *

(7) * * *

(ii) The employer must comply with the requirements concerning availability of records set forth in 29 CFR 1910.1020.

(8) *Transfer of records.* The employer must comply with the requirements concerning transfer of records set forth in 29 CFR 1910.1020(h).

* * * * *

■ 63. Amend § 1926.1127 by removing paragraph (n)(4), redesignating paragraphs (n)(5) and (n)(6) as paragraphs (n)(4) and (n)(5), and revising newly designated paragraph (n)(4)(i) to read as follows:

§ 1926.1127 Cadmium.

* * * * *

(n) * * *

(4) * * *

(i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1) through (3) of this section shall be in accordance with the provisions of 29 CFR 1910.1020.

* * * * *

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

■ 64. Revise the authority citation for part 1928 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 4–2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Section 1928.21 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 533.

■ 65. Revise the definition of the term "potable water" in paragraph (b) of § 1928.110 to read as follows:

§ 1928.110 Field sanitation.

* * * * *

(b) * * *

Potable water means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

[FR Doc. 2011–13517 Filed 6–7–11; 8:45 am]

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S. 990/P.L. 112–14

PATRIOT Sunsets Extension Act of 2011 (May 26, 2011; 125 Stat. 216)

H.R. 793/P.L. 112–15

To designate the facility of the United States Postal Service located at 12781 Sir Francis Drake Boulevard in Inverness, California, as the ''Specialist Jake Robert Velloza Post Office''. (May 31, 2011; 125 Stat. 217)

H.R. 1893/P.L. 112–16

Airport and Airway Extension Act of 2011, Part II (May 31, 2011; 125 Stat. 218)

S. 1082/P.L. 112–17

Small Business Additional Temporary Extension Act of 2011 (June 1, 2011; 125 Stat. 221)

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