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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 360 and 361

[Docket No. APHIS-2008-0097]

Noxious Weeds; Old World Climbing Fern and Maidenhair Creeper

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the noxious weed regulations by adding Old World climbing fern (*Lygodium microphyllum* (Cavanilles) R. Brown) and maidenhair creeper (*Lygodium flexuosum* (Linnaeus) Swartz) to the list of terrestrial noxious weeds. This action is necessary to prevent the artificial spread of these noxious weeds within and into the United States.

DATES: Effective on May 3, 2010, we are adopting as a final rule the interim rule published at 74 FR 53397-53400 on October 19, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737-1236, (301) 734-5225; or Ms. Dorothy Wayson, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, Permits, Registrations, Imports, and Manuals, PPQ, APHIS, 4700 River Road Unit 52, Riverdale, MD 20737-1236, (301) 734-0772.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) administers the noxious weeds regulations in 7 CFR part 360, which prohibit or restrict the importation and interstate movement of those plants that are designated as noxious weeds in § 360.200. The PPA defines "noxious weed" as "any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, and the natural resources of the United States, the public health, or the environment."

Under the authority of the Federal Seed Act of 1939, as amended (7 U.S.C. 1551 *et seq.*), the U.S. Department of Agriculture regulates the importation and interstate movement of certain agricultural and vegetable seeds and screenings. Title III of that Act, "Foreign Commerce," requires shipments of imported agricultural and vegetable seeds to be labeled correctly and to be tested for the presence of the seeds of certain noxious weeds as a condition of entry into the United States. APHIS' regulations implementing the provisions of title III of the Federal Seed Act are found in 7 CFR part 361. A list of noxious weed seeds is contained in § 361.6. Paragraph (a)(1) of § 361.6 lists species of noxious weed seeds with no tolerances applicable to their introduction into the United States.

In an interim rule[1] effective and published in the **Federal Register** on October 19, 2009 (74 CFR 53397-53400, Docket No. APHIS-2008-0097), we amended the regulations by adding Old World climbing fern (*Lygodium microphyllum* (Cavanilles) R. Brown) and maidenhair creeper (*Lygodium flexuosum* (Linnaeus) Swartz) to the list of terrestrial noxious weeds in § 360.200(c) and to the list of noxious weed seeds with no tolerances applicable to their introduction in § 361.6(a)(1). In that interim rule, we also made the weed risk assessment (WRA) and the Federal decision document available for public review and comment.

We solicited comments concerning the interim rule, WRA, and the Federal decision document for 60 days ending December 18, 2009. We received three comments, two from private citizens and one from a State Department of Agriculture and Consumer Services, by that date. All of the commenters supported the addition of both Old World Climbing Fern (*L. microphyllum*) and Maidenhair Creeper (*L. flexuosum*) to the list of Federal Noxious weeds.

One of the commenters asked that we consider adding other species within the Schizaeaceae family to the list of Federal noxious weeds. Specifically, the commenter was concerned that other species in the Schizaeaceae family are weedy and/or invasive, because *L. microphyllum* and *L. flexuosum* have been reported to interbreed with closely related species. A link to a reference on the Internet was provided by the commenter to try to illustrate that behavior.

In our assessment of *L. microphyllum*, *L. flexuosum*, and *L. japonicum* we did not encounter any evidence that these species are capable of hybridizing with any other species. The study that the commenter referred to examines the reproductive biology of *L. microphyllum* and *L. japonicum* and provides evidence that *L. microphyllum* is capable of intergametophytic crossing. Intergametophytic crossing refers to two different gametophytes of the same species crossing with each other; it does not refer to crossing of two different species, which concerned the commenter. Two other species of *Lygodium* were once reported to hybridize, but there is no immediate indication that these or any other members of the Lygodiaceae or Schizaeaceae families are weeds. APHIS will continue to explore the literature to determine whether any additional Lygodiaceae or Schizaeaceae warrant regulation.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

[1] To view the interim rule, the supporting documents, and the comments we received, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0097*).

List of Subjects

7 CFR Part 360

Imports, Plants (Agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation, Weeds.

7 CFR Part 361

Agricultural commodities, Imports, Labeling, Quarantine, Reporting and recordkeeping requirements, Seeds, Vegetables, Weeds.

PART 360—NOXIOUS WEED REGULATIONS

PART 361—IMPORTATION OF SEED AND SCREENINGS UNDER THE FEDERAL SEED ACT

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR parts 360 and 361 and that was published at 74 FR 53397-53400 on October 19, 2009.

Done in Washington, DC, this 27th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–10282 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–34–S

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 985 and 989

FEDERAL HOUSING FINANCE AGENCY

12 CFR Parts 1273 and 1274

RIN 2590–AA30

Board of Directors of Federal Home Loan Bank System Office of Finance

AGENCY: Federal Housing Finance Agency.

ACTION: Final Rule.

SUMMARY: Governed by the Federal Housing Finance Agency's (FHFA) regulations, the Federal Home Loan Bank System's (Bank System) Office of Finance issues debt ("consolidated obligations") as agent for the Federal Home Loan Banks (Banks) on which the Banks are jointly and severally liable and publishes combined financial reports on the Banks so that members of the Bank System, investors in the consolidated obligations, and other interested parties can assess the strength of the Bank System that stands behind them. The Office of Finance (OF) is governed by a board of directors, the composition and functions of which are determined by FHFA's regulations. FHFA's experience with the Bank System and with the OF's combined financial reports during the recent period of market stress suggests that the OF and the Bank System could benefit from a reconstituted board and strengthened audit committee. This regulation is intended to achieve that end.

DATES: This rule is effective June 2, 2010.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, 202–408–2845, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; Neil Crowley, Deputy General Counsel, 202–343–1316; or Thomas E. Joseph, Senior Attorney-Advisor, 202–414–3095, Office of General Counsel, 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

A. Creation of the Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654, transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises), the oversight responsibilities of the Federal Housing Finance Board (FHFB or Finance Board) over the Banks and the Office of Finance (OF) (which acts as the Banks' fiscal agent), and certain functions of the Department of Housing and Urban Development to FHFA, a new independent executive branch agency. *See id.* at section 1101, 122 Stat. 2661–62. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at section 1102, 122 Stat. 2663–64. The Enterprises, the Banks, and the OF continue to operate under regulations promulgated by OFHEO and the FHFB until FHFA issues its own regulations. *See id.* at sections 1302, 1313, 122 Stat. 2795, 2798.

B. The Bank System Generally

The twelve Banks are instrumentalities of the United States organized under the Federal Home Loan Bank Act (Bank Act).[1] *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may purchase the capital stock of a Bank, and only members or certain eligible housing associates (such as state housing finance agencies) may obtain access to secured loans, known as advances, or other products provided by a Bank. *See* 12 U.S.C. 1426(a)(4), 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public interest by enhancing the availability of residential mortgage and community lending credit through its member institutions. *See* 12 U.S.C. 1427. Any eligible institution (generally a federally insured depository institution or state-regulated insurance company) may become a member of a Bank if it satisfies certain criteria and purchases a specified amount of the Bank's capital stock. *See* 12 U.S.C. 1424; 12 CFR part 1263.

As government-sponsored enterprises (GSEs), the Banks are granted certain privileges under federal law. In light of those privileges and their status as GSEs, the Banks typically can borrow funds at spreads over the rates on U.S. Treasury securities of comparable maturity lower than most other entities. The Banks pass along a portion of their GSE funding advantage to their members—and ultimately to consumers—by providing advances and other financial services at rates that would not otherwise be available to their members. Consolidated obligations (COs), consisting of bonds and discount notes, are the principal funding source for the Banks. The OF issues all COs on behalf of the twelve Banks. Although each Bank is primarily liable for the portion of consolidated obligations corresponding to the proceeds received by that Bank, each Bank is also jointly and severally liable with the other eleven Banks for the payment of principal and interest on all COs. *See* 12 CFR 966.9.

C. The OF

The OF was one of a number of joint Bank offices established by regulation by the former Federal Home Loan Bank Board (FHLBB), a predecessor agency to

[1] Each Bank is generally referred to by the name of the city in which it is located. The twelve Banks are located in: Boston, New York, Pittsburgh, Atlanta, Cincinnati, Indianapolis, Chicago, Des Moines, Dallas, Topeka, San Francisco, and Seattle.

FHFA. *See* 65 FR 324, 326 (Jan. 4, 2000). The OF was originally formed from two other joint Bank Offices, the Office of System Finance and the Office of Fiscal Agent. Among other things, OF was assigned the duties previously vested in the Fiscal Agent which included facilitating the issuance of COs. *Id.*

In 1989, as part of the amendments made to the Bank Act by the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA),[2] all joint offices of the Bank System other than the OF were abolished. The FHLBB was also abolished and its regulatory authority over the Bank System, including the OF, was transferred to the Finance Board. The FHLBB's regulations were also transferred to the Finance Board. *Id.* In 1992, the Finance Board reorganized the OF as fiscal agent of the Finance Board for issuing COs under section 11(c) of the Bank Act, and set forth other duties for OF.[3] *See* 57 FR 11429 (Apr. 3, 1992) (*adopting* 12 CFR part 941). The regulation also instituted a three-member board of directors for the oversight and management of the OF, made up of two Bank presidents and a private United States citizen with demonstrated expertise in financial markets. *Id.*

In January 2000, the Finance Board proposed changes to its regulations to alter how COs were issued under section 11 of the Bank Act, reorganize the OF and its board of directors, and expand the duties of the OF, including assigning the OF the duty to prepare the Bank System combined annual and quarterly financial reports. *See* 65 FR 324. As proposed, the January 2000 regulation transferred authority for issuance of the Bank COs from the Finance Board, which had been issuing debt pursuant to then-existing authority under section 11(c) of the Bank Act, to the Banks themselves pursuant to authority under section 11(a) of the Bank Act and subject to the requirement, among other things, that all such debt issued by the Banks be the joint and several obligations of all twelve Banks and be issued through the OF as their agent. *Id.* Under the proposed regulation, the Finance Board retained the option to issue COs itself under section 11(c) of the Bank Act at any point in the future.

The Finance Board also believed that "[a]s a natural and necessary adjunct to the issuance of COs, the Banks also should be responsible for the preparation of the disclosure documents that facilitate CO issuance and for the periodic combined financial statements for the Bank System." *Id.* at 325. The Finance Board therefore proposed that the OF, as the only joint Bank System office and existing agent for CO issuance, be assigned the duty of preparing the Bank System's combined financial reports. *Id.* The Finance Board also proposed to codify disclosure standards in the regulation, many of which had been set forth in a Finance Board policy statement. Other duties related to debt issuance and management were also proposed to be assigned to the OF.

In light of the expanded duties assigned to the OF as well as amendments to the Bank Act that had recently been made by the Gramm-Leach-Bliley Act (GLB Act) of 1999,[4] the Finance Board also thought it was appropriate to alter both the size and composition of the OF board. *Id.* at 326. The Finance Board had two main goals in proposing its changes. First, it wanted to build on the governance structure in the Bank Act by which the Banks should be provided greater autonomy to manage their affairs. Second, it wanted to assure each Bank had representation on the OF board to help achieve operational goals and wanted to assure that the OF board itself had directors with experience and qualification to help the OF meet the evolving needs of the Bank System.

After consideration of the comments on the proposed regulation, the Finance Board adopted many of the changes including those authorizing the Banks to issue COs under section 11(a) of the Bank Act and assigning to the OF the function of preparing the Bank System's combined financial reports, along with additional duties. *See* 65 FR 36290 (June 7, 2000) (*adopting* among other parts 12 CFR parts 966 and 985). The Finance Board did not, however, adopt the proposed changes to the OF board structure or composition. Instead, the new regulation incorporated the prior three-person board structure. The Finance Board also specified some additional duties for the OF board consistent with the additional functions that had been assigned to the OF over the years. Since the 2000 rulemaking, no significant changes to the regulations governing the OF have been proposed.

D. Proposed Rule

On August 4, 2009, FHFA published a proposed rule for comment which would have altered the structure, composition and duties of the OF board of directors and its audit committee. *See* 74 FR 38564. As proposed, the rule also would have transferred the current OF board regulations, as well as regulations related to Banks' financial statements, respectively from parts 985 and 989 of title 12 to parts 1273 and 1274 of Title 12.

The proposal would have expanded the OF board of directors to between fifteen and seventeen members, consisting of the twelve Bank presidents and from three to five Independent Directors (as defined under the rule). The proposed rule also would have created an Audit Committee for the OF board made up of the Independent Directors. The Audit Committee would have been assigned the duty to oversee the audit of the OF and the preparation of the Bank System's combined financial report. To help ensure that information from the Banks could be combined in a meaningful and accurate fashion in the combined financial report, the proposed rule also would have empowered the OF Audit Committee to require the Banks to establish common accounting policies and procedures with regard to information submitted to the OF. As with the current regulation, the proposed rule also set forth standards for the combined financial reports. The proposed rule addressed the duties of the OF board of directors generally, although it would have carried over many of the provisions in the current regulations with regard to the OF board's duties.

Under the proposed rule, FHFA would have selected the initial Independent Directors for staggered terms of up to five years.[5] Each Bank was given the right to nominate one candidate for appointment. Thereafter, Independent Directors would have been elected by the full board of directors for five-year terms, subject to the right of FHFA to review and object to a particular Independent Director's election, reserving to FHFA the right to appoint Independent Directors if it thought the OF board had not elected suitably qualified persons. Under the proposed rule, FHFA also would have appointed the first chairman of the reconstituted OF board from among the Independent Directors and a vice chairman from among all directors.

[2] Public Law 101–73, 103 Stat. 183 (Aug. 9, 1989).

[3] As it existed in 1992, section 11(c) of the Bank Act provided the Finance Board authority to issue the debt on which the Banks were jointly and severally liable. 12 U.S.C. 1431(c)(1992). HERA recently amended this provision and removed authority from the regulator to issue such debt on behalf of the Banks and provided the OF as agent for the Banks with authority to issue the COs. *See* section 1204(3)(B), Pub. L. 110–289, 122 Stat. 2786.

[4] Pub. L. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

[5] Terms would have been staggered such that no more than one Independent Director's seat would be scheduled to become vacant in any year.

Thereafter, the chairman would be elected by the full board of directors from among the Independent Directors and the vice chairman would be elected by the board from among all directors. The proposed rule also set standards for a quorum for board meetings, established a minimum number of board meetings per year, and addressed issues related to board committees and other matters such as compensation and indemnification of directors.

The proposed rule also would have readopted current regulations addressing the financial statements for the Banks, subject to technical corrections made necessary by proposed changes in the composition and duties of the OF Audit Committee. *See* 12 CFR part 989. The proposed rule also would have made changes to part 989 to reflect the fact that the Banks had registered equity securities with the Securities and Exchange Commission subsequent to the adoption of these requirements.

The proposed rule originally had a comment period of 60 days, which was set to close on October 5, 2009. This comment period was later extended for an additional 30 days. *See* 74 FR 50926 (Oct. 2, 2009). FHFA received 23 comment letters on the proposed rule. These comments are discussed below.

E. Considerations of Differences Between the Banks and the Enterprises

Section 1201 of HERA (codified at 12 U.S.C. 4513(f)) requires the Director, when promulgating regulations relating to the Banks, to consider the following differences between the Banks and the Enterprises: Cooperative ownership structure; Mission of providing liquidity to members; Affordable housing and community development mission; capital structure; and Joint and several liability. The Director also may consider any other differences that are deemed appropriate. In preparing this final regulation, FHFA considered the differences between the Banks and the Enterprises as they relate to the above factors, and determined that the rule is appropriate.

II. The Final Rule

A. Comments

FHFA received 23 comment letters on the proposed rule from the Banks, the OF, trade associations, and individual representing members. The OF along with eleven of the twelve Banks submitted a single joint comment letter, while the remaining Bank submitted its own comment letter. FHFA also received comments from six trade associations that represent Bank System members, as well as fifteen letters from individuals representing member institutions. Copies of the comments are available at FHFA's Web site, *http://www.fhfa.gov.*

The comments generally supported the proposed expansion of the OF board of directors to include all twelve Bank presidents and additional independent directors. The comments were also generally supportive of the proposal to establish for the OF an Audit Committee made up of Independent Directors. The commenters opposed, however, some of the specific powers and duties assigned to the Audit Committee under the proposed rule, especially those provisions mandating the Audit Committee to require the Banks to adopt common accounting policies. A number of commenters felt that some of the duties and authority assigned to the Audit Committee should be vested in the full OF Board or were inconsistent with the role and authority of the individual Banks' boards of directors and audit committees.

Commenters also felt that the duties that would be assigned to either the OF board of directors or its Audit Committee should not be described by reference to the part 917 rules. The commenters noted that the part 917 rules addressed the duties and authority of the individual Banks' board of directors and that the relationship of the OF to the Banks was different from the relationship of a Bank to its members. A number of commenters suggested that the duties of the OF board of directors or Audit Committee be limited specifically to those enumerated in the rule. Some commenters also believed that the proposed rule gave FHFA too much authority to appoint Independent Directors and to overrule decisions of the OF board of directors and urged FHFA to change these provisions. Commenters also made specific suggestions of wording changes in a number of proposed provisions of the rule that they believed would clarify the meaning of the provision or otherwise improve the rule.

B. Final Rule Provisions

FHFA has considered all the comments in developing the final rule. It has accepted a number of the suggestions made by commenters and, as discussed below, has made changes in the final rule as a result. FHFA believes, however, that the basic approach of the proposed rule remains correct, as do its underlying reasons for initially proposing the changes. FHFA views the changes in this final rule as an important step in assisting the Banks to coordinate among themselves the process of providing the OF with information to prepare the Bank System's combined financial reports and assisting the OF otherwise to obtain information where the coordination process has not worked well. Most importantly, FHFA continues to believe that high-quality combined financial reports play an important role in the ability of the Banks to access financial markets and issue debt and that they provide financial markets with needed information about the Bank System. Therefore, much of the proposed rule is carried over into the final regulation, albeit often with some small changes in language to clarify the extent and scope of the provision in question. Comments, and the changes that FHFA has made to the rule, are discussed in more detail below in the section describing each final rule provision.

Section 1273.1—Definitions

FHFA has adopted the definitions as proposed. FHFA did not receive any comments that addressed the proposed definitions directly, although one commenter suggested using a term other than "Independent Director" since the term is used somewhat differently under the rule than in the general corporate governance context. FHFA has considered this comment, but is continuing to use the term Independent Director. The qualifications for Independent Director are set forth in the rule. The definition of this term makes clear that the term means a party that meets such qualifications, and its use is not intended to imply any other meaning. Thus, FHFA has not made the requested change.[6]

Section 1273.2—Authority of the OF

FHFA has adopted this section as proposed. The provision, as proposed, was similar to § 985.2 which had previously set forth the OF authority. The proposed provision reflected the fact that HERA amended section 11 of the Bank Act so that the regulator was no longer authorized to issue COs. *See* Public Law 110–289, Div. A, Title II, section 1204(3) (*amending* 12 U.S.C. 1431(b) and (c)). Thus, § 1273.2 as adopted, unlike former § 985.2, does not provide that the OF may act as agent for FHFA in the issuance of COs.

Section 1273.3—Functions of the OF

FHFA has made a number of clarifying changes in the final version of § 1273.3, which describes the general functions of the OF, in response to

[6] Additional comments were received on the proposed qualifications for an Independent Director. These comments are discussed below in the section addressing § 1273.7, which sets out the qualifications for Independent Directors.

comments on the proposed rule. These changes do not alter the scope of the proposed provision, but FHFA believes that the changes will make its original intent more clear.

First, FHFA has altered § 1273.3(a) to provide that, in the offering, issuance and servicing of COs, the OF is acting as agent for the Banks. As originally proposed, the provision merely stated that the OF was agent. Some comments indicated that language in this provision and in § 1273.6 should make clear that the OF administers these functions on behalf of the Banks but is not the issuer of debt and does not enjoy independent authority to undertake these activities. FHFA believes that the change in the final rule, along with the description in § 1273.2 that OF acts as agent for the Banks makes clear that the OF is not acting independently of the Banks in these activities. Moreover, the language in § 1273.3(a) now closely follows the language in section 11(b) and (c) of the Bank Act, as amended by HERA, which states that "the Office of Finance as agent for the Banks may issue" consolidated Bank debentures or bonds.[7]

Second, FHFA has changed § 1273.3(b) to clarify that, in preparing the combined financial reports, the OF shall apply consistent accounting policies and procedures as provided under § 1273.9(b). Commenters urged that the reference to "consistent accounting policies and procedures" should be removed from this section, and from § 1273.6(b)(2), because the references were confusing and raised issues as to whether the language created a "consistency" requirement beyond or in addition to that set forth in § 1273.9(b). FHFA believes that the change in the language makes clear that language in this section is referencing § 1273.9(b) and is not creating a "consistency" requirement independent or separate from that under § 1273.9(b). The provision makes clear, however, that the OF has the duty to apply policies adopted under § 1273.9(b) in preparing the Bank System combined financial reports.[8]

Commenters also asked that § 1273.3 be changed to specifically limit the OF's functions to those listed in the section. FHFA sees no need for this change. As now written, the provisions clearly delineate the OF functions, and FHFA does not believe the rule as adopted is vague or will be subject to expansive interpretation.

Section 1273.4—FHFA Oversight

As proposed, the provision would have carried over Finance Board regulation § 985.5 with minor technical changes. It also would have added a new paragraph (c) that provided that FHFA would determine whether a combined Bank System annual or quarterly financial report complied with the standards of the part 1273 regulations, a provision that in scope and content was basically the same as Finance Board rule § 985.6(b)(5). One commenter noted that the ramifications of this proposed section were unclear and was not sure why the section was included in the regulation. The commenter asked that the section be removed or expanded to better explain its purpose.

FHFA disagrees that the provision is unclear. As proposed, the provision described FHFA's general oversight authority with regard to the OF, and provided more specific statements about FHFA's examination of the OF and its oversight of the combined financial reports. FHFA agrees that, because of revisions made by HERA the provision needs revision from what was proposed. Prior to HERA, the Bank Act did not clearly delineate the regulator's authority over the OF. HERA, however, added provisions to the Bank Act and the Federal Housing Enterprises Financial Safety and Soundness Act of 1992[9] which more clearly define this authority. Paragraph (a) therefore has been changed to make specific reference to FHFA regulatory authority over the OF under these statutes.

Section 1273.5—Funding of the OF

As proposed, § 1273.5 set forth the Banks' responsibility for jointly funding the OF and the process for, and other requirements related to, this funding. The rule, as proposed, carried over most of the provisions that had been in Finance Board regulation § 985.5. FHFA proposed certain changes to the Finance Board requirements, however. Most significantly, the proposed rule allowed that each Bank's *pro rata* share of the OF's expenses could be calculated by any reasonable formula set by the OF Board of Directors, subject to FHFA's review and right to require the OF to make changes to that formula. By contrast, under the Finance Board's regulation, the formula was specified in the rule, although the OF board retained the right to implement an alternative funding formula with the Finance Board's approval.

FHFA received one comment that was generally supportive of the approach in the proposed rule for establishing the method of calculating each Bank's share of the OF's funding. Another commenter believed, however, that FHFA did not need to reserve authority to require the OF board of directors to change the formula. The commenter stated that the rule required that any formula be reasonable and that FHFA maintained its general oversight and enforcement authority to enforce this requirement so that the agency could take action if the OF board of directors did not adopt a reasonable approach to calculating each Bank's share of the OF's expenses.

FHFA considered this comment asking for a change to the provision but decided not to alter the proposed approach to establishing the funding formula. FHFA believes the approach in § 1273.5 will provide greater flexibility than the approach in the Finance Board regulation while maintaining regulatory oversight to make sure any formula remains fair to all Banks and provides for adequate funding of the OF. By removing from the rule a specific formula for calculating each Bank's share of the OF expenses and the requirement that the OF Board of Directors obtain pre-approval from FHFA for any change to such formula, § 1273.5 will allow the OF board of directors to take action in response to changed conditions while allowing FHFA to intervene quickly if needed. Thus, FHFA is adopting § 1273.5 as proposed.

Section 1273.6—Debt Management Duties of the OF

Proposed § 1273.6 described the debt management duties of the OF, and these duties substantively remained similar to those set forth in Finance Board regulation § 985.6. As indicated in the notice of proposed rulemaking, however, FHFA proposed certain changes to the standards governing the preparation of the combined financial report. These proposed changes were needed, among other reasons, to conform the duties in this section to new responsibilities proposed for the Audit Committee with regard to ensuring consistency of information provided by the Banks for use in the combined financial reports. *See* 74 FR at 38566, 38567. As already discussed, FHFA received comments on certain aspects of proposed § 1273.6 and has made clarifying changes to the proposed language similar to changes made to proposed language in § 1273.3. *See* notes 7 and 8, *supra.*

[7] FHFA is adopting a similar change to wording in § 1273.6(a) for the same reasons discussed here.

[8] FHFA is adopting a similar change to the language in § 1273.6(b)(2) for the same reasons discussed here.

[9] 12 U.S.C. 4501 *et seq.*

FHFA also received comments asking that it alter § 1273.6(b)(4) so that the deadline for publication of the combined financial report be 21 days after the Banks' filing deadline with the SEC. The commenters indicated that this would give the OF sufficient time to complete the combined reports after each Bank finalized its reporting to the SEC. After considering this request, FHFA is not altering the deadline for publication of the quarterly and annual combined financial reports. The Bank System is one of the largest non-governmental issuers of debt in the world, with the level of outstanding COs approaching $1 trillion. The combined financial report is an important and convenient source of information for investors and other parties interested in the Bank System and Bank System debt. FHFA believes that timely publication of the combined financial report is important to the Banks' continued access to financial markets. Therefore, the combined reports are as important, if not more so, than the individual Bank reports. FHFA, therefore, expects that the OF and the Banks will take whatever steps are necessary to file the combined financial reports on the schedule set forth in SEC rules for the individual Banks. Further, given the limited nature of the Banks' business lines—advances, and in some cases acquired member assets—and the limited universe of their investment activities, FHFA also thinks the deadlines set forth in the rule are reasonable.

With regard to the requirements for delivering copies of the combined reports to the Banks and Bank members also found in § 1273.6(b)(4), FHFA confirms that OF may continue to rely on Finance Board Regulatory Interpretation 2007–RI–01 (Jan. 19, 2007), which sets forth terms and conditions for the electronic distribution of these financial reports, to meet these requirements.

Other commenters suggested that FHFA modify § 1273.6 to give the OF Board of Directors authority to limit issuance of COs by any Bank or Banks to enforce OF policies. While the OF board has delegated to OF's management the authority to prohibit or redirect issuance of COs because of market reasons, the OF does not currently enjoy the power to prohibit the issuance of debt to enforce specific policies. FHFA, therefore, has carefully considered making these changes but has decided not to do so at this time because it does not believe such changes are necessary to achieve the goals of this final rule. Under rules adopted herein (and carried over from the Finance Board regulations), the Banks are required to provide the OF with information in form and timeframes set forth by the OF to facilitate the preparation of the combined financial reports. *See* 12 CFR 1274.3 (as adopted herein). Under the assessment formula approved by FHFA in February 2009, a Bank that fails to meet a deadline for the submission of information to OF can be subject to a special assessment. Thus, the Banks could be subject to enforcement and other actions if they fail to comply with OF policies with regard to submission of information.

Commenters also suggested that § 1273.6 be modified to give the OF authority to impose appropriate limits on any Bank's or the Bank System's exposure to risk as necessary to facilitate the issuance of COs. Assigning the OF risk management duties of the type suggested would go beyond the current scope of the OF's duties, and FHFA does not wish to take such a step at this time.

FHFA, however, intends to monitor how the OF board, and its Audit Committee, implement the changes being adopted at this time, and may consider proposing changes along the lines suggested in these comments if it believes this type of authority needs to be granted to the OF board to achieve the goals of this final rule.

Section 1273.7—Structure of the OF Board of Directors

Commenters generally supported the basic structure of having an OF board of directors made up of the twelve Bank presidents and some Independent Directors, but provided a number of comments about specific aspects of this section. As discussed below, FHFA made a number of changes to the provisions as a result of these comments and made some other changes to clarify the meaning of some provisions in this section.

In response to comments, FHFA clarified language in § 1273.7(a)(1) to state that if a Bank presidency becomes vacant, the person designated by the Bank's board of directors to fill temporarily the duties of president shall serve on the OF board of directors until the presidency is filled permanently. The language in the proposed rule created some unintended ambiguity on this point, by stating that a person appointed to temporarily fill the duties of president may serve on the OF board of directors. The change will assure that a Bank has representation on the board as soon as the Bank's board designates a temporary or interim president.

Given that the proposed rule provided that from three to five Independent Directors would serve on the OF board of directors, commenters also requested that the final rule clarify how the final number of Independent Directors should be determined within the authorized range. They suggested that the OF board of directors be given authority to make this determination. FHFA agrees that some certainty on this point is needed, and has decided to change § 1273.7(a)(2) to specify that five Independent Directors shall serve on the OF board of directors. FHFA believes that five Independent Directors will better help assure a diversity of perspective and experience on the board and the Audit Committee and provide better representation with regard to the public interest than would having as few as three Independent Directors.

FHFA also received a number of comments concerning the qualifications proposed in § 1273.7(a)(2) for Independent Directors. First, commenters felt that the criteria limiting an Independent Director's financial interest in a Bank member or a consolidated obligation dealer or seller group should be eliminated because the requirement could prevent many qualified individuals serving as Independent Directors, especially given the large number of Bank members. Commenters also urged FHFA to adopt criteria closer to those used by the New York Stock Exchange to determine independence of board members, which would include a requirement that the board of directors affirmatively determine that the Independent Director had no material relationship with the Bank System. Commenters also indicated that the rule should make clear that only current officers, directors, or employees of a Bank or a Bank System member were prohibited from serving as Independent Directors and that this prohibition did not apply to former officers, directors, or employees.

FHFA has considered these comments and has modified the qualifications for Independent Directors. Under the final rule, a director, to be considered independent, must not have any material relationship with a Bank or the OF (either directly or as the partner, shareholder, or officer of an organization with a material relationship) as determined under criteria set forth in a policy adopted by the OF board of directors. This policy should address when a financial interest in, or other relationship with, a Bank System member would constitute a material relationship with a Bank or the OF. This approach would give the board more flexibility to look at the nature of an individual's financial interests in a member and determine whether the

interest would constitute a material relationship with a particular Bank that gives rise to a disqualifying conflict (or the appearance of such a conflict). The policy should also consider and address issues such as when a family member's professional or financial interest may create a conflict that should disqualify an individual from serving as an Independent Director, or whether other direct or indirect relationships of an individual with the Bank System (which can include business or advisory relationships) should disqualify such individual from serving. FHFA expects that the OF board of directors will refer to rules of the New York Stock Exchange and similar organizations in developing the policy, but recognizes that the cooperative nature and other unique aspects of the Bank System may not allow such criteria to be adopted without appropriate modification.

The final rule also sets forth minimum criteria that the "independence" policy must meet. First, such policy must provide that an Independent Director may not be an officer, director or employee of any Bank, or member of a Bank. This requirement basically carries over previously proposed criteria. After considering the comments, FHFA also believes that recent employment or service as a director at a Bank or Bank member may also create at least an appearance that a director is not independent. Therefore, the OF board of directors' policy must disqualify an individual who was an officer, director or employee of any Bank, or member of a Bank at any time in the past three years from serving as an Independent Director. The final rule also states that the policy must provide that a current officer or employee of the OF, or a person who was an officer or employee of the OF at any time during the past three years, cannot serve as an Independent Director.

Second, the OF board policy must prohibit from serving as an Independent Director, a person who is affiliated with any consolidated obligations selling or dealer group under contract with the OF, or who has a financial interest in such group that exceeds the lesser of $250,000 or 0.01% of the group's market capitalization. This final provision basically carries over the proposed financial interest limits for consolidated obligation seller or dealer groups. The final rule also adopts the proposed criteria as to when a financial interest in a holding company of a consolidated obligations seller or dealer group would disqualify a person from serving as an Independent Director. FHFA has further altered the final rule so that a person who has combined financial interests of more than $1,000,000 in more than one consolidated obligation seller or dealer groups under contract with the OF must also be disqualified by the OF board policy from serving as an Independent Director. FHFA continues to believe that, given the OF role in issuing COs, an Independent Director's possessing such a financial interest in a consolidated obligation seller or dealer group or groups would create a conflict, or an appearance of conflict, that would prevent such a director from being considered independent, and is therefore adopting this provision as part of the final rule.

As in the proposed rule, the final rule requires that Independent Directors be United States citizens and, as a group, have substantial experience in financial and accounting matters. With regard to this latter requirement, some commenters asked that FHFA verify that the reference to "as a group" meant that the requirement could be met when considering the collective expertise of the Independent Directors and did not have to be met by each Director. FHFA confirms that this was its intent. Commenters also requested confirmation that the experience can be derived from a variety of sources including past experience as an attorney, government official, or business executive that was involved in financial and accounting matters. Again, FHFA confirms that this was its intent as long as such involvement qualified as substantive experience and not merely tangential involvement in these areas.

As proposed, § 1273.7(b) of the final rule provides that Independent Directors will serve for five-year terms which will be staggered so that no more than one Independent Director seat is scheduled for election in any one year. The final provision also provides, as in the proposed rule, that when an Independent Director seat becomes vacant prior to the end of a scheduled term, any individual will be elected (or appointed by FHFA) only for the remainder of the term associated with that seat. In response to comments, FHFA has clarified in the final rule that where a director is elected or appointed to fill an Independent Director seat that has become vacant before the end of the term, the partial term does not count for purposes of the prohibition on an Independent Director's serving for more than two full terms.

The final rule also continues to provide for FHFA to appoint the initial Independent Directors, the initial chairman of the reconstituted board from among the Independent Directors, and the initial vice chairman from among all directors, even though some commenters urged that these positions initially be filled through election by the board as a whole. FHFA believes that it has an important role to play in the initial selection of the board members to ensure that the overall goals of the rule are met, and thus has not altered the proposal on this point.

To enable the current OF board of directors and the Banks to play an important role in nominating candidates for initial selection, however, FHFA has changed the process for nominating the initial slate of Independent Directors. Under § 1273.7(c)(2) of the final rule, the current OF board of directors, in consultation with the Banks, should nominate within 45 days of publication date of this final rule in the **Federal Register** a slate of at least five candidates for the Independent Directorships that FHFA can consider for appointment. This slate of candidates can include the private citizen member of the current OF board. This is a change from the proposed rule which provided that each Bank individually nominate one person and which did not give the current OF board a role in the nominating process. FHFA believes that the change will allow the current OF board and the Banks to propose a slate of candidates whose collective experience will be more appropriate and better suited to the duties of the board than if each Bank nominated a candidate individually. Overall, this should improve the chances that FHFA will find suitable candidates among the nominees. Under the final rule, FHFA will be able to appoint the Independent Directors from among the candidates nominated by the OF board, from among other persons identified by FHFA itself, or from some combination of these two groups.

FHFA recognizes that at the time the current OF board will need to nominate a slate of candidates for consideration by FHFA as Independent Directors, the new board will not have had an opportunity to develop and approve the policy identifying additional criteria for "independence" required by § 1273.7(a)(2)(iii). Therefore, FHFA expects that the current board in choosing its slate of nominees for appointment as Independent Directors will assure that the candidates meet at least the minimum criteria for independence set forth in the final rule. In making its appointments, FHFA also will consider whether any relationships that a candidate may have with a Bank or the Bank System could, in its view, compromise the candidate's ability to act independently and will make its decisions accordingly.

The final rule generally adopts the provisions dealing with election of independent directors as proposed. In this respect, the final rule requires the OF board to provide FHFA with relevant biographic and background information about an elected Independent Director at least 20 business days before that Director assumes any duties. This requirement applies whether the person is newly elected or is being re-elected; for directors that are re-elected, FHFA would expect to receive relevant biographic and background information at least 20 business days before the new term begins. The final rule also retains FHFA's right to object to a particular Independent Director and to appoint an Independent Director if FHFA believes in its judgment that the OF board failed to elect a qualified person. Some commenters objected to FHFA retaining the right of objection to, and appointment of, Independent Directors, but FHFA believes that this right of review is legitimate for the regulator and will help assure that the requirements and goals of this rule are met. In response to comments, the final rule does clarify, however, that FHFA will exercise its right to object to a particular Director prior to the time that the Independent Director is to assume his or her duties (or for a Director that has been re-elected, prior to when the new term is to begin). The rule also provides that in any notice of objection, FHFA will inform the OF board if FHFA will appoint someone to fill the seat in question or if the OF board should hold a new election to do so.

In response to comments, the final rule modifies the proposed provisions subjecting the charters of any committees established by the board to FHFA's review and approval, although the final rule continues to provide that the by-laws of the board of directors and the charter of the Audit Committee shall be subject to review and approval by FHFA. The final rule also no longer specifically reserves to FHFA the right to require the OF board of directors to withdraw or change the scope of any delegation made by it. These changes, however, do not alter or diminish FHFA's general oversight, examination, or enforcement authority with regard to such actions by the OF board of directors.

With regard to these proposed provisions, some commenters felt that it was inappropriate for FHFA to reserve to itself such direct involvement in the internal affairs of the OF board and that the provisions were contrary to the devolution of authority from the regulator to the Banks that began with the passage of the Gramm-Leach-Bliley Act of 1999. Commenters pointed out that this was especially true because, even without these provisions, all aspects of the OF's activities would remain subject to FHFA's general oversight and examination authority. Similar comments were made with regard to the proposed provision reserving to FHFA the right to require the OF board to withdraw or change the scope of any delegation made by it.

FHFA believes that, in light of the changes to duties and responsibilities of the board of directors and the Audit Committee made by this regulation, FHFA has a legitimate need to review and approve the by-laws of the board of directors and the charter of the Audit Committee to assure that these documents are consistent with, and meet, the goals and requirements of this rulemaking. FHFA also believes that such review and approval is a proper exercise of its supervisory authority. Thus, the final rule continues to provide that the by-laws of the board of directors and the charter of the Audit Committee shall be subject to review and approval by FHFA. FHFA believes that that supervisory need is less prominent with respect to the charters of other committees and delegations made by the board, and therefore has deleted the requirement that those charters and delegations also be subject to FHFA review and approval.

FHFA also adopted as final the proposed provision that provided that the OF shall pay reasonable compensation and expenses to the Independent Directors in accordance with the payment of compensation and expenses to Bank directors. Commenters urged FHFA to change this provision so that the OF board could compensate and pay expenses of Independent Directors as would be reasonable under the circumstances rather than limiting compensation and reimbursement by reference to provision applicable to Bank directors. In fact, the rule provides that OF director compensation must comply with the same standard as that of Bank directors—a standard of reasonableness—and not that OF director compensation be the same as that of Bank directors.

In response to urging by commenters, FHFA changed in the final rule the provision dealing with indemnification so that the OF board can choose the body of law that would govern corporate governance practice and procedure, including indemnification, from among the law of the jurisdiction in which the OF is located, Delaware Corporation law, or the Revised Model Business Corporation Act. As commenters pointed out, this approach would be similar to rules previously adopted by OFHEO with regard to the Enterprises.[10] The change will allow the OF board to have more specific guidance as to what legal standards should apply to their corporate governance and indemnification practices than did the proposed provision, which was silent on this point. The final rule requires the OF board to make this choice of law decision within 90 calendar days from the date of its initial organizational meeting required under § 1273.10. The final rule also makes clear that the OF shall indemnify its directors, officers (including the Chief Executive Officer), and employees under such terms and conditions as are determined by the board, and that the board may maintain insurance with respect to such persons.

Section 1273.8—General Duties of the OF Board of Directors

Proposed § 1273.8 sets out the general duties of the OF board of directors. Most of the specific provisions in this section as proposed were carried over from existing Finance Board regulation § 985.8. Nevertheless, FHFA received a number of comments on this section.

First, commenters urged FHFA not to describe the OF board's general duties by reference to the regulations in 12 CFR part 917, as such references could create confusion. Commenters noted that the part 917 regulations address the duty of a Bank's board of directors to a Bank's members, and that the duties owed by the OF board of directors to the Banks and the Bank System may differ fundamentally from those owed by a Bank's board to its member institutions. FHFA agrees, and has changed proposed § 1273.8(a) accordingly. As adopted, § 1273.8(a) now provides that an OF director should carry out his or her duties in good faith in a manner that the director believes to be in the best interests of the OF and the Bank System, with such care, including a duty of reasonable inquiry, as an ordinary prudent person in a like position would use under similar circumstances. It also provides that the OF directors should administer the affairs of the OF fairly and impartially without discrimination in favor of or against any Bank. It also requires directors to develop a familiarity with the basic business, finance, and accounting practices of the Banks, to be able to understand the Banks' combined financial statements, and to make substantive inquiries of management and of the internal and external auditors with regard to the combined financial statements and the

[10] *See* 12 CFR 1710.10.

OF's individual financial statement. FHFA also removed other references to the part 917 regulations where it felt the reference could be confusing or inappropriate.

Commenters also suggested that FHFA alter the proposed quorum requirements so that the requirement for a quorum could be set in the OF by-laws rather than in the rule, or that the quorum be set at a majority of sitting directors rather than ten directors as proposed. FHFA has considered these comments but believes that the quorum requirements should be set in the rule to assure that there is adequate representation of all parties, including Independent Directors, at each meeting. Thus, FHFA has adopted a final provision that states that a quorum requires at least a majority of sitting directors, which must include a majority of Independent Directors.[11] The OF board may adopt in its by-laws more stringent quorum requirements than those adopted in the rule.

Commenters argued that the requirement for at least six in-person board meetings per year should be dropped, and that the number of required meetings should instead be established in the by-laws. FHFA believes that, given the duties assigned to the OF board, a requirement of six in-person board meetings is reasonable and necessary to assure that those duties are carried out. Thus, it has not changed this requirement.

FHFA also received comments asking that the proposal be changed to allow the OF board, rather than FHFA, to assign additional duties to the Chief Executive Officer of the OF. Proposed § 1273.8(d)(4), however, already clearly provided that the OF board (and not FHFA) select, employ, determine the compensation for, and assign the duties and functions of the Chief Executive Officer, subject to certain minimum responsibilities.[12] Thus, no change was made in the final rule in response to this comment.

Section 1273.9—Audit Committee

Proposed § 1273.9 set out the duties and function of the OF Audit Committee. Under the proposed rule, the Audit Committee would assume the OF board's previous responsibility for overseeing the OF's preparation of the combined financial reports, and duties related to overseeing the audit of these reports and of the OF itself. As part of these responsibilities, the proposed rule would have required the Audit Committee to ensure that the Banks adopt consistent accounting policies and procedures so that the combined financial reports continue to be accurate and meaningful. Where the Banks were unable to agree to such policies, the proposed rule would have authorized the Audit Committee, in consultation with FHFA, to prescribe them.

A large number of the comments made on the proposed rule addressed § 1273.9. In particular, commenters addressed the proposed provisions assigning to the Audit Committee the duty and authority to require the Banks to adopt consistent accounting policies and procedures so that information submitted by them may be combined to create accurate and meaningful combined financial reports. In general, commenters felt these provisions were inappropriate in that the power to adopt accounting policies and procedures should be vested in the board of directors or audit committees of the individual Banks. They also felt that the rule failed to recognize the role of the individual Banks in establishing their own accounting policies, and felt that consistency can only be achieved through cooperation, not by mandate of the OF's Audit Committee.

Alternatively, commenters suggested that the Audit Committee's role be that of making recommendations to the full OF board of directors. One commenter suggested that the Audit Committee be required only to assure that Banks' accounting policies and procedures be only "sufficiently" consistent to assure that information can be combined in an accurate and meaningful way. Some commenters also questioned whether the regulator-imposed limitation under the rule on a Bank's right to make accounting policy choices otherwise acceptable under generally accepted accounting principles (GAAP) would itself be a violation of GAAP. Other commenters urged that the proposed rule be refined to reflect the appropriate discretion that is accorded to the Banks as independent entities to apply GAAP.

Commenters also questioned the use of the phrase "accurate and meaningful" stating that it had no well-understood meaning in law. Commenters said the proposed provision also appeared to impose on the OF Audit Committee the duty to ensure accuracy of the underlying financial information submitted by the Banks, a task that they did not believe could be accomplished by the Audit Committee. They urged that the rule be recast to make clear that the OF Audit Committee was only responsible for the acts related to the combining of information and not for the accuracy of the information reported by the Banks.

FHFA has carefully considered these comments. It continues to believe that the OF Audit Committee, made up of the Independent Directors, remains the appropriate body for overseeing the preparation of the combined financial reports, and it must have all appropriate authority needed to be successful in this task. As Independent Directors, members of the Audit Committee will have a lesser incentive and less of a vested interest than any Bank president to represent the view of any particular Bank or Banks, and will be in the best position to ensure that, given the information presented by the Banks, the combined financial reports presents an accurate and meaningful picture of the Bank System's financial condition. FHFA agrees that as an initial matter, it is the duty of the Banks themselves to coordinate accounting policies and procedures to assure that information is presented in a uniform manner so that it can be combined in an accurate and meaningful fashion. FHFA also recognizes, however, that the Banks have not always been able to agree on such presentation and that it is appropriate to give the Audit Committee authority, in consultation with FHFA, to require consistent accounting policies and procedures where needed so that it can carry out its duties with regard to the preparation of the combined financial reports. FHFA does not believe that it is inconsistent with GAAP for the Audit Committee to require particular accounting principles to be used in submitting information for the combined reports from among the range of principles that may be available under GAAP; nor does FHFA believe that this is inconsistent with the independent identities and reporting responsibilities of the twelve Banks, given that they retain their authority to issue their own separate financial statements, which are not required to be consistent across all twelve Banks, in their SEC filings.

FHFA also believes that its overall approach is consistent with its authority to supervise the safety and soundness of the Bank System. The goal of the rule is to improve the disclosure now provided by the combined financial reports. Combined financial reports are necessary and useful to the market because a Bank does not issue debt in its own name but as a Bank System. Thus, the need for the rule is driven by the unique funding mechanism of the

[11] Thus, if all board seats were filled, a quorum would require the presence of at least nine board members, of whom at least three would have to be Independent Directors.

[12] By contrast, the proposed rule also provided that the OF board of directors should assume such additional duties as might be assigned to it by FHFA. This provision was proposed and adopted as § 1273.8(d)(6).

Bank System, including the joint and several nature of Bank COs.

Given the comments just discussed, FHFA also realizes that the wording of the proposed provisions may not have fully reflected its intent and thus has made some changes to the language of the final rule. First, it has changed the language in § 1273.9(b)(1) to state that the Audit Committee will be responsible for "overseeing the audit function of the OF and the preparation and the accurate and meaningful combination of the information submitted by the Banks in the Bank System's combined financial reports." FHFA believes that this wording more accurately reflects the Audit Committee's oversight of the preparation of the combined financial reports especially, with regard to the basis and approach to combining information received from the Banks, but that the OF Audit Committee is not responsible for overseeing the reliability and integrity of the accounting policies and financial reporting and disclosure policies of the individual Banks, or the accuracy of the information that they submit. FHFA has also adopted new language in § 1273.9(b)(2) which now states that the "Audit Committee shall ensure that the Banks adopt consistent accounting policies and procedures to the extent necessary for information submitted by the Banks to the OF to be combined to create accurate and meaningful combined financial reports." This change makes it clear that the Audit Committee's authority to require consistent accounting policies and procedures is not meant to be unlimited in nature, but to assure it can fulfill its duties with regard to the combined financial reports.

While FHFA has made some changes, it has kept the phrase "accurate and meaningful" even though some commenters felt it lacked precision and had no clear meaning under law. FHFA believes the words themselves have a well understood plain meaning and can be applied accordingly. In using the term "accurate", FHFA contemplates that the combination of the several Banks' financial statements and quantitative disclosures is correctly presented, that the overall presentation complies with GAAP, relevant interpretative materials put forth by accounting and audit standard setters, and with this and other applicable regulations and guidance issued by FHFA. In using the term "meaningful", FHFA contemplates that the combined statements will present, in an understandable and transparent manner, robust disclosures and discussion that will enhance the readers' understanding of the Banks' combined financial conditions, changes in this financial condition, and the combined results of their operations.

FHFA also notes that under this rule both as proposed and adopted, the Audit Committee is responsible for selecting the external auditor for the combined financial statements. Historically, the Banks have selected a common auditor for the individual Bank and combined financial statements audits. Engaging a common external auditor may promote more consistent accounting practices, would avoid subjecting the Banks and the OF to inter-firm disagreements on accounting matters, and has been found by the Banks to be more cost-effective than using multiple auditors. FHFA recognizes that as a practical matter the auditor for the combined financial reports is likely to be the same firm that audits the individual Banks.

Based on comments, the final rule does not define the Audit Committee duties in § 1273.9(c) by reference to § 917.7 of this title, which addresses the duties of a Bank's audit committee. FHFA agrees that this reference is confusing given the differences between the Banks and the OF. Instead, FHFA added descriptions of relevant duties that should be carried out by the Audit Committee in the final rule as paragraphs (c)(7) through (c)(15) of § 1273.9. This list of duties is based on those in § 917.7, although they have been modified to reflect differences between the Banks and the OF. The duties assigned to the Audit Committee under these provisions include overseeing the preparation and audit of the OF's own financial statements and the OF's internal controls. The Audit Committee is also responsible for providing an independent direct channel of communication between the OF board of directors and OF's internal and external auditors. The Audit Committee also must periodically report findings to the full board and must keep written minutes of its meetings. The final rule also requires that the Audit Committee adopt and the full board approve, a written charter that specifies the scope of the Audit Committee's powers and responsibilities, consistent with the duties and authority set forth in § 1273.9. The Audit Committee and the board also must review and assess the adequacy of the charter on an annual basis, and where appropriate make changes, and re-adopt and re-approve the charter not less often than every three years. The final rule makes clear that the charter of the Audit Committee is subject to review and approval by FHFA.

Some commenters also requested that FHFA recast the duties of the Audit Committee based on language contained in the Securities Exchange Act of 1934 (1934 Act).[13] Along these lines commenters also asked that the rule should make clear that the Audit Committee is part of the board of directors as a whole and is not acting separate or apart from the board's general oversight responsibility for the OF. FHFA has not made specific changes in response to these comments. FHFA believes that § 1273.9 as adopted is consistent with the audit committee provisions of the 1934 Act, although FHFA notes that, because the OF is not a reporting company or a company at all, those provisions do not apply to it.

FHFA also received comments that the OF board of directors should be able to establish an Audit Committee made up of less than all of the Independent Directors. Commenters felt this would allow the board to find Independent Directors whose skills may not fit with those required for the Audit Committee but could provide important insights on other areas of interest. As already noted, FHFA believes that having five Independent Directors sit on the Audit Committee will better assure a diversity of perspective and experience than would a smaller number, and will thereby help the Committee better carry out its duties under this rule. FHFA also believes that the skill sets required of the Independent Directors under the rule are not narrowly tailored and that the board will be able to find Independent Directors with a wide range of knowledge and experience that will prove valuable to the board in carrying out its duties. FHFA therefore is not adopting this suggestion.

Section 1273.9(a) of the final rule also now clarifies that the Audit Committee shall elect its chairperson from among its members. The provision makes clear that nothing prevents the Audit Committee from choosing the OF Chairperson also to serve as chair of the Audit Committee if the Committee so decides. This is not a requirement, however, and any Independent Director

[13] Section 10A(m)(2) of the 1934 Act states in relevant part that:

The audit committee * * *, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation and oversight of the work of any registered public accounting firm employed * * * (including resolution of disagreements between management and the auditor regarding financial reporting) for purposes of preparing or issuing an audit report or related work, and each registered public accounting firm shall report directly to the audit committee.

15 U.S.C. 78j–1(m).

may be elected chair of the Audit Committee.

Section 1273.10—Transition

Commenters suggested that the final rule should require that an organizational meeting of the new OF board of directors be held within a set time of the effective date of the rule and that the new OF board of directors be deemed to be reconstituted as of that date. FHFA agrees that it is important to set out in the rule more specific details of how the transition should occur between the current OF board of directors and the new board of directors required under this part 1273. As such, FHFA is adopting, as part of the final rule, § 1273.10, which lays out a transition provision.

Under this section, the new OF board of directors will be required to hold an organizational meeting within 45 calendar days of the date that FHFA first appoints an Independent Director under § 1273.7(c). The board shall be deemed to be reconstituted as of the date of the organizational meeting. The rule provides that the person appointed chairman of the new board shall have authority to set the date of the organizational meeting. The transition provision also makes clear that until the date of the organizational meeting, the current OF board of directors and its audit committee shall continue to have power and authority to act in these capacities.

The transition provision also provides that the audit committee as in existence immediately prior to the effective date of the rule may continue to have responsibility and oversight authority with regard to the preparation and publication of any combined financial report that covers a reporting period that ends prior to July 1, 2010. This provision will avoid requiring the members of the reconstituted Audit Committee to review and approve any combined financial statements for a period during which the new Committee was not in existence. The rule, however, would allow the new board of directors to determine that the new Audit Committee of Independent Directors may take over the responsibility for a combined financial report that covers a period prior to July 1, 2010. This provision is meant to provide flexibility in when responsibility for the combined financial reports is handed over, given that it is difficult to predict the exact date of the organizational meeting and therefore hard to predict how much time a new Audit Committee would have before it had to take its first actions with respect to a combined financial report. Thus, if the board believes the Independent Directors have sufficient time to familiarize themselves with relevant issues prior to the completion of the preparation and publication of a combined financial report, it can allow the new Audit Committee to take over this duty with respect to a report that covers a period prior to the third quarter of 2010.

Appendix A to Part 1273 and Part 1274

FHFA did not receive any specific comments on the proposed Appendix A to Part 1273 or to the proposed Part 1274 rules. FHFA is adopting these provisions substantively as proposed. FHFA notes that as adopted, Appendix A to Part 1273 would require biographical information about the Bank presidents to appear only once in the combined financial report and not twice, even though the Bank presidents also serve as OF board members. The combined report should make clear that the Bank presidents serve as OF board members and provide an appropriate cross reference to where the biographical information appears.

III. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Therefore, FHFA has not submitted any information to the Office of Management and Budget for review.

IV. Regulatory Flexibility Act

The final rule applies only to the Banks and the OF (which is a joint office of the Banks), which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), FHFA certifies that this final rule will not have significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 985

Federal home loan bank, Securities.

12 CFR Part 989

Accounting, Federal home loan banks, Financial disclosure.

12 CFR Part 1273

Federal home loan banks, Securities.

12 CFR Part 1274

Accounting, Federal home loan banks, Financial disclosure.

■ Accordingly, for reasons stated in the preamble, under the authority of 12 U.S.C. 4526(a), FHFA amends chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

Subchapter K—Office of Finance

PART 985—[REMOVED]

■ 1. Remove 12 CFR part 985.

PART 989—[REMOVED]

■ 2. Remove 12 CFR part 989.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

Subchapter D—Federal Home Loan Banks

■ 3. Add part 1273 to subchapter D to read as follows:

PART 1273—OFFICE OF FINANCE

Sec.

1273.1 Definitions.
1273.2 Authority of the OF.
1273.3 Functions of the OF.
1273.4 FHFA oversight.
1273.5 Funding of the OF.
1273.6 Debt management duties of the OF.
1273.7 Structure of the OF board of directors.
1273.8 General duties of the OF board of directors.
1273.9 Audit Committee.
1273.10 Transition.
Appendix A to Part 1273—Exceptions to the General Disclosure Standards

Authority: 12 U.S.C. 1431, 1440, 4511(b), 4513, 4514(a), 4526(a).

§ 1273.1 Definitions.

For purposes of this part:

Audit Committee means the OF Independent Directors acting as the committee established in accordance with § 1273.9 of this part.

Bank written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Bank System means the Federal Home Loan Bank System, consisting of the twelve Banks and the Office of Finance.

Chair means the chairperson of the board of directors of the Office of Finance.

Chief Executive Officer or *CEO* means the chief executive officer of the Office of Finance.

Consolidated obligations means any bond, debenture or note on which the Banks are jointly and severally liable and which was issued under section 11 of the Bank Act (12 U.S.C. 1431) and any implementing regulations, whether or not such instrument was originally issued jointly by the Banks or by the Federal Housing Finance Board on behalf of the Banks.

FHFA means the Federal Housing Finance Agency.

Financing Corporation or *FICO* means the Financing Corporation established and supervised by FHFA under section 21 of the Bank Act (12 U.S.C. 1441).

Generally accepted accounting principles or *GAAP* means accounting principles generally accepted in the United States.

Independent Director means a member of the OF board of directors who meets the qualifications set forth in § 1273.7(a)(2) of this part.

NRSRO means a credit rating organization registered as a Nationally Recognized Statistical Rating Organization with the Securities and Exchange Commission.

Office of Finance or *OF* means the Office of Finance, a joint office of the Banks established under this part 1273 and referenced in the Bank Act and the Safety and Soundness Act.

Resolution Funding Corporation or *REFCORP* means the Resolution Funding Corporation established by section 21B of the Bank Act (12 U.S.C. 1441b).

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.

§ 1273.2 Authority of the OF.

(a) *General.* The OF shall enjoy such incidental powers under section 12(a) of the Bank Act (12 U.S.C. 1432(a)), as are necessary, convenient and proper to accomplish the efficient execution of its duties and functions pursuant to this part, including the authority to contract with a Bank or Banks for the use of Bank facilities or personnel in order to perform its functions or duties.

(b) *Agent.* The OF, in the performance of its duties, shall have the power to act on behalf of the Banks in issuing consolidated obligations and in paying principal and interest due on the consolidated obligations, or other obligations of the Banks.

(c) *Assessments.* The OF shall have authority to assess the Banks for the funding of its operations in accordance with § 1273.5 of this part.

§ 1273.3 Functions of the OF.

(a) *Joint debt issuance.* Subject to parts 965 and 966 of this title, and this part, the OF, as agent for the Banks, shall offer, issue, and service (including making timely payments on principal and interest due) consolidated obligations.

(b) *Preparation of combined financial reports.* The OF shall prepare and issue the combined annual and quarterly financial reports for the Bank System in accordance with the requirements of § 1273.6(b) and Appendix A of this part, using consistent accounting policies and procedures as provided in § 1273.9(b) of this part.

(c) *Fiscal agent.* The OF shall function as the fiscal agent of the Banks.

(d) *Financing Corporation and Resolution Funding Corporation.* The OF shall perform such duties and responsibilities for FICO as may be required under part 995 of this title, or for REFCORP as may be required under part 996 of this title or authorized by FHFA pursuant to section 21B(c)(6)(B) of the Bank Act (12 U.S.C. 1441b(c)(6)(B)).

§ 1273.4 FHFA oversight.

(a) *Oversight and enforcement actions.* FHFA shall have such oversight authority over the OF, the OF board of directors, the officers, employees, agents, attorneys, accountants, or other OF staff as set forth in the Bank Act, the Safety and Soundness Act, and FHFA regulations issued thereunder.

(b) *Examinations.* Pursuant to section 20 of the Bank Act (12 U.S.C. 1440), FHFA shall examine the OF, all funds and accounts that may be established pursuant to this part 1273, and the operations and activities of the OF, as provided for in the Bank Act, the Safety and Soundness Act, or any regulations promulgated pursuant thereto.

(c) *Combined financial reports.* FHFA shall determine whether a combined Bank System annual or quarterly financial report complies with the standards of this part.

§ 1273.5 Funding of the OF.

(a) *Generally.* The Banks are responsible for jointly funding all the expenses of the OF, including the costs of indemnifying the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF, as provided for in this part.

(b) *Funding policies.*—(1) At the direction of and pursuant to policies and procedures adopted by the OF board of directors, the Banks shall periodically reimburse the OF in order to maintain sufficient operating funds under the budget approved by the OF board of directors. The OF operating funds shall be:

(i) Available for expenses of the OF and the OF board of directors, according to their approved budgets; and

(ii) Subject to withdrawal by check, wire transfer or draft signed by the Chief Executive Officer or other persons designated by the OF board of directors.

(2) Each Bank's respective *pro rata* share of the reimbursement described in paragraph (b)(1) of this section shall be based on a reasonable formula approved by the OF board of directors. Such formula shall be subject to the review of FHFA, and the OF board of directors shall make any changes to the formula as may be ordered by FHFA from time to time.

(c) *Alternative funding method.* With the prior approval of FHFA, the OF board of directors may, by contract with a Bank or Banks, choose to be reimbursed through a fee structure, in lieu of or in addition to assessment, for services provided to the Bank or Banks.

(d) *Prompt reimbursement.* Each Bank from time to time shall promptly forward funds to the OF in an amount representing its share of the reimbursement described in paragraph (b) of this section when directed to do so by the Chief Executive Officer pursuant to the procedures of the OF board of directors.

(e) *Indemnification expenses.* All expenses incident to indemnification of the members of the OF board of directors, the Chief Executive Officer, and other officers and employees of the OF shall be treated as an expense of the OF to be reimbursed by the Banks under the provisions of this part.

(f) *Operating funds segregated.* Any funds received by the OF from the Banks pursuant to this section for OF operating expenses promptly shall be deposited into one or more accounts and shall not be commingled with any proceeds from the sale of consolidated obligations in any manner.

§ 1273.6 Debt management duties of the OF.

(a) *Issuing and servicing of consolidated obligations.* The OF, as agent for the Banks, shall issue and service (including making timely payments on principal and interest due, subject to §§ 966.8 and 966.9 of this title) consolidated obligations pursuant to and in accordance with the policies and procedures established by the OF board of directors under this part.

(b) *Combined financial reports requirements.* The OF, under the oversight of the Audit Committee, shall prepare and distribute the combined annual and quarterly financial reports for the Bank System in accordance with the following requirements:

(1) The scope, form, and content of the disclosure generally shall be consistent with the requirements of the Securities and Exchange Commission Regulations S–K and S–X (17 CFR parts 229 and 210).

(2) Information about each Bank shall be presented as a segment of the Bank System as if generally accepted

accounting principles regarding business segment disclosure applied to the combined annual and quarterly financial reports of the Bank System, and shall be presented using consistent accounting policies and procedures as provided in § 1273.9(b) of this part.

(3) The standards set forth in paragraphs (b)(1) and (b)(2) of this section are subject to the exceptions set forth in Appendix A to this part.

(4) The combined Bank System annual financial reports shall be filed with FHFA and distributed to each Bank and Bank member within 90 days after the end of the fiscal year. The combined Bank System quarterly financial reports shall be filed with FHFA and distributed to each Bank and Bank member within 45 days after the end of the of the first three fiscal quarters of each year.

(5) The Audit Committee shall ensure that the combined Bank System annual or quarterly financial reports comply with the standards of this part.

(6) The OF and the OF board of directors, including the Audit Committee, shall comply promptly with any directive of FHFA regarding the preparation, filing, amendment, or distribution of the combined Bank System annual or quarterly financial reports.

(7) Nothing in this section shall create or be deemed to create any rights in any third party.

(c) *Capital markets data.* The OF shall provide capital markets information concerning debt to the Banks.

(d) *NRSROs.* The OF shall manage the relationships with NRSROs in connection with their rating of consolidated obligations.

(e) *Research.* The OF shall conduct research reasonably related to the issuance or servicing of consolidated obligations.

(f) *Monitor Banks' credit exposure.* The OF shall timely monitor, and compile relevant data on, each Bank's and the Bank System's unsecured credit exposure to individual counterparties.

§ 1273.7 Structure of the OF board of directors.

(a) *Membership.* The OF board of directors shall consist of seventeen part-time members as follows:

(1) The twelve Bank presidents, *ex officio,* provided that if the presidency of any Bank becomes vacant, the person designated by the Bank's board of directors to temporarily fulfill the duties of president of that Bank shall serve on the OF board of directors until the presidency is filled permanently; and

(2) Five Independent Directors who—

(i) Each shall be a citizen of the United States;

(ii) As a group, shall have substantial experience in financial and accounting matters; and

(iii) Shall not have any material relationship with a Bank, or the OF (directly or as a partner, shareholder or officer of an organization), as determined under criteria set forth in a policy adopted by the OF board of directors. At a minimum, such policy shall provide that an Independent Director may not:

(A) Be an officer, director, or employee of any Bank or member of a Bank, or have been an officer director or employee of a Bank or member of a Bank during the previous three years;

(B) Be an officer or employee of the OF, or have been an officer or employee of the OF during the previous three years; or

(C) Be affiliated with any consolidated obligations selling or dealer group under contract with OF, or hold shares or any other financial interest in any entity that is part of a consolidated obligations seller or dealer group in an amount greater than the lesser of $250,000 or 0.01% of the market capitalization of the seller or dealer group; or in an amount that exceeds $1,000,000 for all entities that are part of any consolidated obligations seller dealer group, combined. For purposes of this paragraph (a)(2)(iii)(C), a holding company of an entity that is part of a consolidated obligations seller or dealer group shall be deemed to be part of the consolidated obligations selling or dealer group if the assets of the holding company's subsidiaries that are part of a consolidated obligation seller or dealer group constitute 35% or more of the consolidated assets of the holding company.

(b) *Terms.*—(1) Except as provided in paragraphs (b)(2) and (c)(1) of this section, each Independent Director shall serve for five-year terms (which shall be staggered so that no more than one Independent Director seat would be scheduled to become vacant in any one year), and shall be subject to removal or suspension in accordance with § 1273.4(a) of this part. An Independent Director may not serve more than two full, consecutive terms, provided that any partial term served by an Independent Director pursuant to paragraph (b)(2) of this section, or time served by a private citizen member of the OF Board pursuant to an appointment made prior to the effective date of this part, shall not count as a term for purposes of this restriction.

(2) The OF board of directors shall fill any vacancy among the Independent Directors occurring prior to the scheduled end of a term by majority vote, subject to FHFA's review of, and non-objection to, the new Independent Director. The OF board of directors shall provide FHFA with the same biographic and background information about the new Independent Director required under paragraph (d) of this section, and FHFA shall have the same rights of non-objection to the Independent Director (and to appoint a different Independent Director) as set forth in paragraph (d) of this section. A person shall be elected (or otherwise appointed by FHFA) under this paragraph to serve only for the remainder of the term associated with the vacant directorship.

(c) *Initial selection of Independent Directors.*—(1) As soon as practicable after the effective date of this regulation, FHFA shall fill the initial Independent Director positions by appointment. The Independent Directors shall be appointed for such periods of time, not to exceed five years, to assure the terms are staggered in accordance with paragraph (b)(1) of this section.

(2) The two Bank presidents and the private citizen member who constituted the OF board of directors immediately prior to the effective date of this rule shall, in consultation with the Banks, agree on a slate of at least five persons and nominate such persons for consideration for appointment as Independent Directors by FHFA under this paragraph (c). The nominations shall be submitted to FHFA on or before June 17, 2010. FHFA may appoint persons nominated under this paragraph or other persons identified by it and meeting the requirements of paragraph (a)(2) of this section, or some combination.

(d) *Election of Independent Directors after the initial terms.* Once the terms of the Independent Directors initially appointed by FHFA expire or the positions otherwise become vacant, the Independent Directors subsequently shall be elected by majority vote of the OF board of directors, subject to FHFA's review of, and non-objection to, each Independent Director. The OF board of directors shall provide FHFA with relevant biographic and background information, including information demonstrating that the new Independent Director meets the requirements of paragraph (a)(2) of this section, at least 20 business days before the person assumes any duties as a member of the OF board of directors. If the OF board of directors, in FHFA's judgment, fails to elect a suitably qualified person, FHFA may appoint some other person who meets the requirements of paragraph (a)(2) of this section. FHFA will provide notice of its objection to a particular Independent

Director prior to the date that such Director is to assume duties as a member of the OF board of directors. Such notice shall indicate whether, given FHFA's objection, FHFA intends to fill the seat through appointment or a new election should be held by the OF board of directors.

(e) *Initial Selection of Chair and Vice-Chair.* The first Chair and Vice-Chair of the OF board of directors after the effective date of this regulation shall be appointed by FHFA. The Chair shall be selected from among the Independent Directors appointed under paragraph (c)(1) of this section. The Vice-Chair shall be selected from among all OF board directors.

(f) *Subsequent Election of Chair and Vice-Chair.* After the terms of the persons selected under paragraph (e) of this section expire or the positions otherwise become vacant:

(1) Subsequent Chairs shall be elected by majority vote of the OF board of directors from among the Independent Directors then serving on the OF board of directors; and

(2) Subsequent Vice-Chairs shall be elected by majority vote of the OF board of directors from among all directors.

(3) The OF board of directors shall promptly inform FHFA of the election of a Chair or Vice-Chair. If FHFA objects to any Chair or Vice-Chair elected by the OF board of directors, FHFA shall provide written notice of its objection within 20 business days of the date that FHFA first receives the notice of the election of the Chair and or Vice-Chair, and the OF board of directors must then promptly elect a new Chair or Vice-Chair, as appropriate.

(g) *By-laws and Committees.*—(1) The OF board of directors shall adopt by-laws governing the manner in which the board conducts its affairs, which shall be consistent with the requirements of this part and other applicable laws and regulations as administered by FHFA. The by-laws of the board of directors shall be subject to review and approval by FHFA.

(2) In addition to the Audit Committee required under § 1273.9 of this part, the OF board of directors may establish other committees, including an Executive Committee. The duties and powers of such committee, including any powers delegated by the OF board of directors, shall be specified in the by-laws of the board of directors or the charter of the committee.

(h) *Compensation.*—(1) The Bank presidents shall not receive any additional compensation or reimbursement as a result of their service as a director of the OF board.

(2) The OF shall pay reasonable compensation and expenses to the Independent Directors in accordance with the requirements for payment of compensation and expenses to Bank directors as set forth in part 1261 of this title.

(i) *Corporate Governance and Indemnification.*—(1) *General.* The corporate governance practices and procedures of the OF, and practices and procedures related to indemnification (including advancement of expenses) shall comply with applicable Federal law rules and regulations.

(2) *Election and designation of body of law.* To the extent not inconsistent with paragraph (i)(1) of this section, the OF shall elect to follow the corporate governance and indemnification practices and procedures set forth in one of the following: (i) The law of the jurisdiction in which the principal office of the OF is located, as amended; (ii) the Delaware General Corporation Law (Del. Code Ann. Title 8, as amended); or (iii) the Revised Model Business Corporation Act, as amended. The OF board of directors, as constituted under this part, shall designate in its by-laws the body of law elected pursuant to this paragraph (i)(2) within 90 calendar days from the date that it holds the organizational meeting required under § 1273.10(a) of this part.

(3) *Indemnification.* Subject to paragraphs (i)(1) and (i)(2) of this section, to the extent applicable, the OF shall indemnify (and advance the expenses of) its directors, officers and employees under such terms and conditions as are determined by the OF board of directors. The OF shall be authorized to maintain insurance for its directors, the CEO, and any other officer or employee of the OF. Nothing in this paragraph shall affect any rights to indemnification (including the advancement of expenses) that a director, the CEO, or any other officer or employee of the OF had with respect to any actions, omissions, transactions, or facts occurring prior to the effective date of this paragraph (i).

(j) *Delegation.* In addition to any delegation to a committee allowed under paragraph (g) of this section, the OF board of directors may delegate any of its authority or duties to any employee of the OF in order to enable OF to carry out its functions.

(k) *Outside staff and consultants.* In carrying out its duties and responsibilities, the OF board of directors, or any committee thereof, shall have authority to retain staff and outside counsel, independent accountants, or other outside consultants at the expense of the OF.

§ 1273.8 General duties of the OF board of directors.

(a) *General.* Each director shall have the duty to:

(1) Carry out his or her duties as director in good faith, in a manner such director believes to be in the best interests of the OF and the Bank System, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the OF fairly and impartially and without discrimination in favor of or against any Bank;

(3) At the time of appointment or election, or within a reasonable time thereafter, have a working familiarity with basic finance and accounting practices, including the ability to read and understand the Banks' combined balance sheets and income statements and the relevant financial statements of the OF and to ask substantive questions of management and the internal and external auditors with regard to both the combined financial statements of the Bank System and the operations and financial statements of the OF, as appropriate; and

(4) Direct the operations of the OF in conformity with the requirements set forth in the Bank Act, Safety and Soundness Act, and this chapter.

(b) *Meetings and quorum.* The OF board of directors shall conduct its business by majority vote of its members at meetings convened in accordance with its by-laws, and shall hold no fewer than six in-person meetings annually. Due notice shall be given to FHFA by the Chair prior to each meeting. A quorum, for purposes of meetings of the OF board of directors, shall require a majority of sitting board members, which must include a majority of sitting Independent Directors.

(c) *Duties regarding COs.* The OF board of directors shall oversee the establishment of policies regarding COs that shall:

(1) Govern the frequency and timing of issuance, issue size, minimum denomination, CO concessions, underwriter qualifications, currency of issuance, interest-rate change or conversion features, call features, principal indexing features, selection and retention of outside counsel, selection of clearing organizations, and the selection and compensation of underwriters for consolidated obligations, which shall be in accordance with the requirements and limitations set forth in paragraph (c)(4) of this section;

(2) Prohibit the issuance of COs intended to be privately placed with or sold without the participation of an underwriter to retail investors, or issued with a concession structure designed to facilitate the placement of the COs in retail accounts, unless the OF has given notice to the board of directors of each Bank describing a policy permitting such issuances, soliciting comments from each Bank's board of directors, and considering the comments received before adopting a policy permitting such issuance activities;

(3) Require all broker-dealers or underwriters under contract to the OF to have and maintain adequate suitability sales practices and policies, which shall be acceptable to, and subject to review by, the OF;

(4) Require that COs shall be issued efficiently and at the lowest all-in funding costs over time, consistent with—

(i) Prudent risk-management practices, prudential debt parameters, short and long-term market conditions, and the Banks' role as GSEs;

(ii) Maintaining reliable access to the short-term and long-term capital markets; and

(iii) Positioning the issuance of debt to take advantage of current and future capital market opportunities.

(d) *Other duties.* The OF board of directors shall:

(1) Set policies for management and operation of the OF;

(2) Approve a strategic business plan for the OF in accordance with the provisions of § 917.5 of this title, as appropriate;

(3) Review, adopt and monitor annual operating and capital budgets of the OF in accordance with the provisions of § 917.8 of this title, as appropriate;

(4) Select, employ, determine the compensation for, and assign the duties and functions of a Chief Executive Officer of the OF who shall—

(i) Be head of the OF and direct the implementation of the OF board of directors' policies;

(ii) Serve as a member of the Directorate of the FICO, pursuant to section 21(b)(1)(A) of the Bank Act (12 U.S.C. 1441(b)(1)(A)); and

(iii) Serve as a member of the Directorate of the REFCORP, pursuant to section 21B(c)(1)(A) of the Bank Act (12 U.S.C. 1441b(c)(1)(A)).

(5) Review and approve all contracts of the OF, except for contracts for which exclusive authority is provided to the Audit Committee by paragraphs (b)(5) and (b)(6) of § 1273.9; and

(6) Assume any other responsibilities that may from time to time be assigned to it by FHFA.

(e) *No rights created.* Nothing in this part shall create or be deemed to create any rights in any third party.

§ 1273.9 Audit Committee.

(a) *Composition.* The Independent Directors shall serve as the Audit Committee. The Audit Committee shall elect its chairperson from among its members. The Chairperson of the OF may also serve as chairperson of the Audit Committee, if the Audit Committee members so decide.

(b) *Responsibilities.*—(1) The Audit Committee shall be responsible for overseeing the audit function of the OF and the preparation and the accurate and meaningful combination of information submitted by the Banks in the Bank System's combined financial reports.

(2) For purposes of the combined financial reports, the Audit Committee shall ensure that the Banks adopt consistent accounting policies and procedures to the extent necessary for information submitted by the Banks to the OF to be combined to create accurate and meaningful combined financial reports.

(3) The Audit Committee, in consultation with FHFA, may establish common accounting policies and procedures for the information submitted by the Banks to the OF for the combined financial reports where the Committee determines such information provided by the several Banks is inconsistent and that consistent policies and procedures regarding that information are necessary to create accurate and meaningful combined financial reports.

(4) To the extent possible the Audit Committee shall operate consistent with the requirements pertaining to audit committee reports set forth in Item 407(d)(3) of Regulation S–K promulgated by the Securities and Exchange Commission.

(5) The Audit Committee shall oversee internal audit activities, including the selection, evaluation, compensation and, where appropriate, replacement of the internal auditor. The internal auditor shall report directly to the Audit Committee and administratively to executive management.

(6) The Audit Committee shall have the exclusive authority to employ and contract for the services of an independent, external auditor for the Banks' annual and quarterly combined financial statements and of an independent, external auditor for OF.

(7) The Audit Committee shall direct senior management to maintain the reliability and integrity of the accounting policies and financial reporting of the OF.

(8) The Audit Committee shall review the basis for the OF's financial statements and the external auditor's opinion rendered with respect to such financial statements.

(9) The Audit Committee shall ensure that senior management has established and is maintaining an adequate internal control system within the OF by:

(i) Reviewing the OF's internal control system and the resolution of identified material weaknesses and reportable conditions in the internal control system, including the prevention or detection of management override or compromise of the internal control system; and

(ii) Reviewing the programs and policies of the OF designed to ensure compliance with applicable laws, regulations, and policies and monitoring the results of these compliance efforts.

(10) The Audit Committee shall review the policies and procedures established by senior management to assess and monitor implementation of the OF strategic business plan and the operating goals and objectives contained therein.

(11) The Audit Committee shall provide an independent, direct channel of communication between the OF's board of directors and the internal and external auditors.

(12) The Audit Committee shall conduct or authorize investigations into any matters within the Audit Committee's scope of responsibilities.

(13) The Audit Committee shall report periodically its findings to the OF's board of directors.

(14) The Audit Committee shall prepare written minutes of each Audit Committee meeting.

(c) *Charter.*—(1) The Audit Committee shall adopt, and the OF board of directors shall approve, a formal written charter, consistent with the duties and authority set forth in this section, that specifies the scope of the Audit Committee's powers and responsibilities. The Audit Committee and the OF board of directors shall:

(i) Review, and assess the adequacy of and, where appropriate, amend the Audit Committee charter on an annual basis; and

(ii) Re-adopt and re-approve, respectively, the Audit Committee charter not less often than every three years.

(2) The charter of the Audit Committee shall be subject to review and approval by FHFA.

(d) *No delegation.* The Audit Committee may not delegate the responsibilities assigned to it under this

section to any person, or to any other committee or sub-committee of the OF board of directors.

§ 1273.10 Transition.

(a) Within 45 calendar days of the date on which FHFA first appoints an Independent Director pursuant to § 1273.7(c) of this part, the OF board of directors as structured under this part shall hold an organizational meeting. At the time of such meeting, the OF board of directors and its Audit Committee shall be deemed to be reconstituted in accordance with this part, and, except as set forth in paragraph (c) of this section, shall thereafter operate in accordance with this part. The date of this organizational meeting shall be set by the Independent Director that has been appointed as Chairman of the OF board of directors by FHFA pursuant to § 1273.7(e) of this part.

(b) Until the date of the organizational meeting required by paragraph (a) of this section, the board of directors of OF, and audit committee thereof, as in existence immediately prior to the effective date of this rule, shall continue to have power and authority to act as the OF board of directors or audit committee thereof, as applicable. Further, the board members who served as Chair and Vice-Chair of the OF board immediately prior to the effective date of this rule shall continue also to serve in these capacities until the date of the organizational meeting required under paragraph (a).

(c) Further, the audit committee as in existence immediately prior to the effective date of this rule shall continue to have responsibility and oversight authority with regard to the preparation and publication of the combined financial report for any reporting period that ends prior to July 1, 2010, unless the board of directors established under this part determines that the Audit Committee as established under this part should be given such responsibility.

Appendix A to Part 1273—Exceptions to the General Disclosure Standards

A. Related-party transactions. Item 404 of Regulation S–K, 17 CFR 229.404, requires the disclosure of certain relationships and related party transactions. In light of the cooperative nature of the Bank System, related-party transactions are to be expected, and a disclosure of all related-party transactions that meet the threshold would not be meaningful. Instead, the combined annual report will disclose the percent of advances to members an officer of which serves as a Bank director, and list the top ten holders of advances in the Bank System and the top five holders of advances by Bank, with a further disclosure indicating which of these members had an officer that served as a Bank director. The combined financial report will also disclose the top ten holders of advances in the Bank System by holding company, where the advances of all affiliates within a holding company are aggregated.

B. Biographical information. The biographical information required by Items 401 and 405 of Regulation S–K, 17 CFR 229.401 and 405, will be provided only for members of the OF board of directors, including the Bank presidents, the Chair and Vice-Chair of the board of directors of each Bank, and the Chief Executive Officer of OF.

C. Compensation. The information on compensation required by Item 402 of Regulation S–K, 17 CFR 229.402, will be provided only for Bank presidents and the CEO of the OF. Since stock in each Bank trades at par, the OF will not include the performance graph specified in Item 402(1) of Regulation S–K, 17 CFR 229.402(1).

D. Submission of matters to a vote of stockholders. No information will be presented on matters submitted to shareholders for a vote, as otherwise required by Item 4 of the SEC's form 10–K, 17 CFR 249.310. The only item shareholders vote upon is the annual election of directors.

E. Exhibits. The exhibits required by Item 601 of Regulation S–K, 17 CFR 229.601, are not applicable and will not be provided.

F. Per share information. The statement of financial information required by Items 301 and 302 of Rule S–K, 17 CFR 229.301 and 302, is inapplicable because the shares of the Banks are subscription capital that trades at par, and the shares expand or contract with changes in member assets or advance levels.

G. Beneficial ownership. Item 403 of Rule S–K, 17 CFR 229.403, requires the disclosure of security ownership of certain beneficial owners and management. The combined financial report will provide a listing of the ten largest holders of capital stock in the Bank System and a listing of the five largest holders of capital stock by Bank. This listing will also indicate which members had an officer that served as a director of a Bank. The combined financial report will also disclose the top ten holders of Bank stock in the Bank System by holding company, where the Bank stock of all affiliates within a holding company is aggregated.

■ 4. Add part 1274 to subchapter D to read as follows:

PART 1274—FINANCIAL STATEMENTS OF THE BANKS

Sec.
1274.1 Definitions.
1274.2 Audit requirements.
1274.3 Requirements to provide financial and other information to FHFA and the OF.

Authority: 12 U.S.C. 1426, 1431, 4511(b), 4513, 4526(a).

§ 1274.1 Definitions.

For purposes of this part:

Audit means an examination of the financial statements by an independent accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion thereon.

Audit report means a document in which an independent accountant indicates the scope the audit made and sets forth an opinion regarding the financial statement taken as a whole, or an assertion to the effect that an overall opinion cannot be expressed. When an overall opinion cannot be expressed, the reasons therefor shall be stated.

Bank written in title case, means a Federal Home Loan Bank established under section 12 of the Bank Act (12 U.S.C. 1432).

Bank System means the Federal Home Loan Bank System, consisting of the twelve Banks and the Office of Finance.

FHFA means the Federal Housing Finance Agency.

Financing Corporation or *FICO* means the Financing Corporation established and supervised by FHFA under section 21 of the Bank Act (12 U.S.C. 1441).

Office of Finance or *OF* has the same meaning as set forth in § 1273.1 of this chapter.

§ 1274.2 Audit requirements.

(a) Each Bank, the OF, and the FICO shall obtain annually an independent external audit of and an audit report on its individual financial statement.

(b) The OF audit committee shall obtain an audit and an audit report on the combined annual financial statements for the Bank System.

(c) All audits must be conducted in accordance with generally accepted auditing standards and in accordance with the most current government auditing standards issued by the Office of the Comptroller General of the United States.

(d) An independent, external auditor must meet at least twice each year with the audit committee of each Bank, the audit committee of OF, and the FICO Directorate.

(e) FHFA examiners shall have unrestricted access to all auditors' work papers and to the auditors to address substantive accounting issues that may arise during the course of any audit.

§ 1274.3 Requirements to provide financial and other information to FHFA and the OF.

In order to facilitate the preparation by the OF of combined Bank System annual and quarterly reports, each Bank shall provide to the OF in such form and within such timeframes as FHFA or the OF shall specify, all financial and other information and assistance that the OF shall request for that purpose. Nothing in this section shall contravene or be deemed to circumscribe in any manner the authority of FHFA to obtain any information from any Bank related

to the preparation or review of any financial report.

Dated: April 26, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–10075 Filed 4–30–10; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0993; FRL–9144–4]

Approval and Promulgation of Implementation Plans; New Mexico; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On April 8, 2010 (75 FR 17868), EPA published a direct final rule approving New Mexico State Implementation Plan (SIP) revisions that addressed one element of the "good neighbor" provisions of the Clean Air Act (CAA) for the 1997 ozone standards and the 1997 $PM_{2.5}$ standards. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if EPA received adverse comments by May 10, 2010, EPA would publish a timely withdrawal in the **Federal Register**. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval. EPA will address the comments in a subsequent final action based on the parallel proposal also published on April 8, 2010 (75 FR 17894). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The direct final rule published on April 8, 2010 (75 FR 17868), is withdrawn as of May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Emad Shahin, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6717; fax number 214–665–7263; e-mail address *shahin.emad@epa.gov.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ Accordingly, the amendments to 40 CFR 52.1620 published in the **Federal Register** on April 8, 2010 (75 FR 17868), which were to become effective on June 7, 2010, are withdrawn.

[FR Doc. 2010–10233 Filed 4–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2009–0351; FRL–9144–5]

RIN 2060–AP62

Protection of Stratospheric Ozone: The 2010 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule authorizes uses of methyl bromide that qualify for the 2010 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from existing pre-phaseout inventory for those uses in 2010. EPA is taking action under the authority of the Clean Air Act to reflect a recent consensus decision taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twentieth Meeting of the Parties.

DATES: This rule is effective on May 3, 2010.

ADDRESSES: EPA has established a docket for this action identified under EPA–HQ–OAR–2009–0351. All documents in the docket are listed on the *http://www.regulations.gov* site. 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 only through *http://www.regulations.gov* or in hard copy. To obtain copies of materials in hard copy, please call the EPA Docket Center at (202) 564–1744 between the hours of 8:30 a.m.–4:30 p.m. E.S.T., Monday–Friday, excluding legal holidays, to schedule an appointment. The EPA Docket Center's Public Reading Room address is EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeremy Arling by telephone at (202) 343–9055, or by e-mail at *arling.jeremy@epa.gov* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460. You may also visit the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *http://www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION: This final rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2010. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005, apart from allowable exemptions, such as the critical use exemption and the quarantine and preshipment (QPS) exemption. With this action, EPA is authorizing the uses that qualify for the 2010 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or supplied from pre-phaseout inventory for critical uses in 2010.

Section 553(d) of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 5, generally provides that rules may not take effect earlier than 30 days after they are published in the **Federal Register**. EPA is issuing this final rule under section 307(d)(1) of the Clean Air Act, which states: "The provisions of section 553 through 557 * * * of Title 5 shall not, except as expressly provided in this section, apply to actions to which this subsection applies." Thus, section 553(d) of the APA does not apply to this rule. EPA is nevertheless acting consistently with the policies underlying APA section 553(d) in making this rule effective on May 3, 2010. APA section 553(d) provides an exception for any action that grants or recognizes an exemption or relieves a restriction. This final rule grants an exemption from the phaseout of methyl bromide.

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I. General Information

Regulated Entities

Entities potentially regulated by this action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; users of methyl bromide, *e.g.,* farmers of vegetable crops, fruits, and nursery stock; and owners of stored food commodities and structures such as grain mills and processors.

This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility, company, business, or organization could be regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by provisions of this rule must continue to comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

III. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 baseline level of 25,528,270 kilograms, and setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under Sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with Section 602(d) of the CAAA of 1990, which for newly listed Class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances."

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout

date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with Section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout.

IV. What is the legal authority for exempting the production and import of methyl bromide for critical uses authorized by the parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005. EPA again amended the regulations to allow for an exemption for quarantine and preshipment (QPS) purposes on July 19, 2001 (66 FR 37751), with an interim final rule and with a final rule on January 2, 2003 (68 FR 238).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework to the 2006, 2007, 2008, and 2009 control periods. Under authority of section 604(d)(6) of the CAA, this action specifies the uses that will qualify as approved critical uses in 2010 and the amount of methyl bromide that may be produced, imported, or supplied from inventory to satisfy those uses.

This action reflects Decision XX/5, taken at the Twentieth Meeting of the Parties in November 2008 and Decision XXI/11, taken at the Twenty First Meeting of the Parties in November 2009. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, DC Cir. 2006) and in EPA's "Supplemental Brief for the Respondent," filed in *NRDC* v. *EPA* and available in the docket for this action. In this rule, EPA is honoring commitments made by the United States in the Montreal Protocol context.

V. What is the critical use exemption process?

A. Background of the Process

The critical use exemption is designed to permit the production and import of methyl bromide for uses that do not have technically and economically feasible alternatives and for which the lack of methyl bromide would result in significant market disruption (40 CFR 82.3). The criteria for the exemption initially appeared in Decision IX/6. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to EPA's request for critical use exemption applications published in the **Federal Register** on April 17, 2007 (72 FR 19197), applicants provided data on the technical and economic feasibility of using alternatives to methyl bromide. Applicants also submitted data on their use of methyl bromide, research programs into the use of alternatives to methyl bromide, and efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviewed the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, EPA reviewed other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminated in the development of a document referred to as the critical use nomination (CUN). The U.S. Department of State has submitted a CUN annually to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol, reviewed the CUNs of the Parties and made recommendations to the Parties on the nominations. The Parties then took Decisions to authorize critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consulted with the United States Department of Agriculture (USDA) and other departments and institutions of the Federal government that have regulatory authority related to methyl bromide, and provided an opportunity for public comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

More on the domestic review process and methodology employed by the Office of Pesticide Programs is available in a detailed memorandum titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America," contained in the docket for this rulemaking. While the particulars of the data continue to evolve and administrative matters are further streamlined, the technical review itself remains rigorous with careful consideration of new technical and economic conditions.

On January 24, 2008, the U.S. Government (USG) submitted the sixth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America* to the Ozone Secretariat of the UNEP. This nomination contained the request for 2010 critical uses. In February 2008, MBTOC sent questions to the USG concerning technical and economic issues in the 2010 nomination. The USG transmitted responses to MBTOC on

April 10, 2008. The USG provided additional written responses on April 16, 2009, to questions asked at MBTOC's meeting in Tel Aviv. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The determination in this final rule reflects the analysis contained in those documents.

B. How does this rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule (69 FR 76982) established the framework for the critical use exemption program in the U.S., including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt from the phaseout of methyl bromide specific quantities of production and import for each control period (each calendar year), to determine the amounts that may be supplied from pre-phaseout inventory, and to indicate which uses meet the criteria for the exemption program for that year. *See* 71 FR 5985 (calendar year 2006), 71 FR 75386 (calendar year 2007), 72 FR 74118 (calendar year 2008), and 74 FR 19878 (calendar year 2009).

Today's action authorizes specific critical uses for 2010 and the amounts of Critical Use Allowances (CUAs) and Critical Stock Allowances (CSAs) allocated for those uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kg of methyl bromide for an approved critical use during the specified control period. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. A CSA is the right granted through 40 CFR part 82 to sell 1 kg of methyl bromide from inventory produced or imported prior to the January 1, 2005, phaseout date for an approved critical use during the specified control period.

The critical uses authorized in this rule are the uses included in the USG's sixth CUN and authorized by the Parties in Decision XX/5 as well as the supplemental authorization in Decision XXI/11. EPA is utilizing the existing regulatory framework for critical uses. This framework is discussed in Section V.D.1 of the preamble. EPA proposed and took comment on a modification to the existing framework to ensure that the level of new production and import does not increase from one year to the next. EPA is not finalizing that modification to the existing framework in today's action because the end-of-year reported data shows that it would be unnecessary. This is discussed in more detail in Section V.D.3 of the preamble. EPA may consider that modification in future CUE rulemakings.

C. Critical uses

In Decision XX/5, taken in November 2008, the Parties to the Protocol agreed "to permit, for the agreed critical use categories for 2010 set forth in table C of the annex to the present decision for each Party, subject to the conditions set forth in the present decision and decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2010 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses * * *"

The following uses are those set forth in table C of the annex to Decision XX/5 for the United States:

- Commodities.
- NPMA food processing structures (cocoa beans removed).[1]
- Mills and processors.
- Dried cured pork.
- Cucurbits.
- Eggplant—field.
- Forest nursery seedlings.
- Nursery stock—fruit, nut, flower.
- Orchard replant.
- Ornamentals.
- Peppers—field.
- Strawberries—field.
- Strawberry runners.
- Tomatoes—field.
- Sweet potato slips.

The agreed U.S. critical use levels for 2010 total 3,235,474 kilograms (kg), which is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of allowable new production and import for U.S. critical uses is 2,765,474 kg. This is a combination of the level in Table D of Decision XX/5, which is 2,763,456 kg, and the level in Table B of Decision XXI/11, which is 2,018 kg. Similarly, the maximum amount for use on critical uses is 2,765,474 kg. This is equal to the level in Table C of Decision XX/5, which is 2,763,456 kg (10.8% of baseline), as well as an additional 2,018 kg authorized for 2010 in Table A of Decision XXI/11 for southeast strawberry nurseries. Both Decisions noted that these amounts were to account for available stocks.

[1] NPMA, National Pest Management Association, includes both food processing structures and processed foods.

EPA is allocating a total critical use exemption in 2010 of 2,983,883 kg (11.7% of baseline). This total amount is comprised of new production or import of methyl bromide for critical uses at up to 1,955,775 kg (7.7% of baseline), and pre-phaseout inventory (*i.e.,* stocks) for critical uses of up to 1,028,108 kg (4.0% of baseline). These values differ from the proposed rule for three reasons. First, the rate of inventory drawdown was less than EPA estimated, thus there are "available stocks" for 2010. Second, EPA has updated the total U.S. authorization, which is the starting point for the "available stocks" calculation, to include the 2,018 kg authorized in November 2010 in Decision XXI/11. Further information regarding this supplemental authorization appears in the Notice of Proposed Rulemaking (74 FR 61084). Third, following prior practice, EPA is subtracting the carryover amount from the authorized production amount. EPA has adjusted the carryover to reflect late sales reports.

This final rule modifies 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories identified in Decision XX/5 and Decision XXI/11 for the 2010 control period. Additionally, the Agency is amending the table of critical uses based, in part, on the technical analysis contained in the 2010 U.S. nomination that assesses data submitted by applicants to the CUE program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA sought comment on the technical analysis contained in the U.S. nomination (available for public review in the docket to this rulemaking), as well as information regarding changes to the registration or use of alternatives that have transpired after the 2010 U.S. nomination was submitted. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE. EPA received comments with regard to sulfuryl fluoride and iodomethane. These comments did not provide any new data justifying changes to EPA's analysis. These comments are discussed in Section V.D.5 "Alternatives" of the preamble below. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes "significant market disruption" or "technical and economic feasibility" change. For example, the adoption of methyl iodide in the southeast U.S

could transform the circumstances under which these analyses occur. Based on the information described above, EPA is determining that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2010:

TABLE I—APPROVED CRITICAL USES

Approved critical uses Column A	Approved critical user and location of use Column B	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation Column C
PRE-PLANT USES		
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan	Moderate to severe soilborne disease infestation
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
	(c) Michigan growers	Moderate to severe soilborne disease infestation.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
Orchard Replant	(a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.

TABLE I—APPROVED CRITICAL USES—Continued

Approved critical uses Column A	Approved critical user and location of use Column B	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation Column C
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Michigan herbaceous perennial growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
	(d) New York growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation.

TABLE I—APPROVED CRITICAL USES—Continued

Approved critical uses Column A	Approved critical user and location of use Column B	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation Column C
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(c) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S..	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities..	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc..	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

The critical uses and limiting critical conditions in Table I are modified from the 2009 CUE as follows. First, EPA is adding ornamental growers in New York that are subject to moderate to severe soilborne disease or nematode infestations. This reflects a new application submitted for the production of *Anemone coronaria* in greenhouses and approved as part of the U.S. nomination of ornamentals. Greenhouse-grown anemones in New York are facing a similar situation to other crops in this sector. EPA anticipates the usage of methyl bromide will be very limited, and has nominated only 272 kg for this use. Second, EPA is removing cucurbit growers and pepper growers in Mississippi. These two uses were not part of the CUN and therefore the Parties have not authorized them as critical uses for 2010. Third, EPA is removing bakeries, as they have also transitioned to methyl bromide alternatives and thus did not submit an application for the 2010 control period. Fourth, EPA is removing "export to countries which do not allow the use of sulfuryl fluoride" as a limiting critical condition for commodities. This limiting critical condition was established for the first time in the 2009 CUE rule as a few countries that import commodities treated with sulfuryl fluoride were still in the process of establishing maximum residue levels (MRLs) for sulfuryl fluoride. All countries to which the U.S. exports such commodities have now established MRLs. Therefore, EPA no longer believes this to be a limiting critical condition. EPA sought comment on these proposed changes to the critical uses and their limiting critical conditions. EPA received general support from two commenters to adjust the critical uses and limiting critical conditions in the manner described above. EPA also received one comment questioning some of the limiting critical conditions in Table I. This commenter has raised the same questions in past CUE rulemakings and EPA has responded to them in past rulemakings. EPA provides a copy of those responses in this rule's response to comments.

EPA also proposed to remove North Carolina and Tennessee strawberry nursery growers because the Parties had not authorized that use at the date of the Proposed Rule. Although the U.S. nominated this use for 2010, MBTOC did not recommend this use when it recommended the other critical uses for 2010. Iodomethane is registered for use on strawberry nurseries in these States and the MBTOC initially concluded that this substitute is a technologically and economically feasible methyl bromide alternative suitable to these crops and circumstances. In September 2009, MBTOC received the USG's supplemental request and agreed that time is required to conduct commercial scale up of iodomethane in this sector.

MBTOC recommended 2,018 kg for this use in 2010 and at the 21st MOP in November 2009, the Parties authorized this as a critical use. The Parties also increased the total authorization by 2,018 kg to meet this need. In this final rule, EPA is adding North Carolina and Tennessee strawberry nursery growers to the list of critical uses. EPA is increasing the CSA amount by 2,018 kg to account for this additional demand.

Consistent with the 2009 CUE Rule, EPA repeats the following clarifications made in previous years for ease of reference. The "local township limits prohibiting 1,3-dichloropropene" are prohibitions on the use of 1,3-dichloropropene products in cases where local township limits on use of this alternative have been reached. "Pet food" under subsection B of Food Processing refers to food for domesticated dogs and cats. Finally, "rapid fumigation" for commodities is when a buyer provides short (two working days or fewer) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives.

D. Critical Use Amounts

Section V.C. of this preamble explains that Table C of the annex to Decision XX/5 and Table B of Decision XXI/11 list critical uses and amounts agreed to by the Parties to the Montreal Protocol. When added together, the authorized critical use amounts for 2010 total 3,235,474 kilograms (kg), which is equivalent to 12.7% of the U.S. 1991 methyl bromide consumption baseline of 25,528,270 kg. The maximum amount of new production or import authorized by the Parties is 2,765,474 kg, as set forth in Table D of Decision XX/5 (2,763,456 kg) and Table B of Decision XXI/11 (2,018 kg), or 10.8% of baseline.

EPA proposed to exempt limited amounts of new production and import of methyl bromide for critical uses for 2010 in the amount of 2,275,715 kg (8.9% of baseline). EPA also proposed to allow sale of 690,464 kg (2.7% of baseline) of existing pre-phaseout inventory for critical uses in 2010. In this final rule, EPA is allocating fewer CUAs and more CSAs. EPA is allocating 1,955,775 kg (7.7% of baseline) for new production or import and up to 1,028,108 kg (4.0% of baseline) of pre-phaseout inventory (*i.e.,* stocks) to be used for critical uses. These values differ from the proposed rule for three reasons. First, as discussed below, the rate of inventory drawdown was less than EPA estimated. Thus there are "available stocks" for 2010. Second, EPA is adding 2,018 kg to the total U.S. authorized amount based on the decision taken at the 21st MOP. The total U.S. authorized amount is the starting point for the "available stocks" calculation. Third, following prior practice, EPA is subtracting the carryover amount from the authorized production amount. EPA has adjusted the carryover to reflect late sales reports. The sub-sections below respond to the comments and explain EPA's rationale for the critical use amounts for 2010.

1. Background of Critical Use Amounts

The 2004 Framework Rule established the provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of Critical Stock Allowances (CSAs) and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that pre-phaseout inventories were further taken into account through the trading provisions that allow CUAs to be converted into CSAs. EPA did not propose changes to these basic CSA provisions.

Paragraph 5 of Decision XX/5 further addresses pre-phaseout inventory of methyl bromide. The Decision states "that a Party with a critical use exemption level in excess of permitted levels of production and consumption for critical uses is to make up any such differences between those levels by using quantities of methyl bromide from stocks that the Party has recognized to be available." In the Framework Rule (69 FR 52366), EPA issued CSAs in an amount equal to the difference between the total authorized CUE amount and the amount of new production or import authorized by the Parties.

In the 2006, 2007, 2008, and 2009 CUE Rules, EPA allocated CSAs in amounts that represented not only the difference between the total authorized CUE amount and the amount of authorized new production and import but also an additional amount to reflect available stocks. In the 2006 CUE Rule, EPA issued a total of 1,136,008 CSAs, equivalent to 4.4% of baseline. For 2006, the difference in the Parties' decision between the total CUE amount and the amount of new production and import was 3.6% of baseline. In the 2007 rule, EPA added to the minimum amount (6.3% of baseline) an additional amount (1.2% of baseline) for a total of 1,914,600 CSAs (7.5% of baseline). In the 2008 rule, EPA added to the minimum amount (3.0% of baseline) an additional amount (3.8% of baseline) for a total of 1,729,689 CSAs (6.8% of baseline). In the 2009 rule, EPA added to the minimum amount (1.2% of baseline) an additional amount (6.3% of baseline) for a total of 1,919,193 CSAs (7.5% of baseline). After determining the CSA amount, EPA reduced the portion of CUE methyl bromide to come from new production and import in each of the 2006–2009 control periods such that the total amount of methyl bromide exempted for critical uses did not exceed the total amount authorized by the Parties for that year.

As established in the earlier rulemakings, EPA views the inclusion of these additional amounts in the calculation of the year's overall CSA level as an appropriate exercise of discretion. The Agency is not required to allocate the full amount of authorized new production and consumption. The Parties only agree to "permit" a particular level of production and consumption; they do not—and cannot—mandate that the U.S. authorize this level of production and consumption domestically. Nor does the CAA require EPA to allow the full amount permitted by the Parties. Section 604(d)(6) of the CAA does not require EPA to exempt any amount of production and consumption from the phaseout, but instead specifies that the Agency "may" create an exemption for critical uses, providing EPA with substantial discretion.

When determining the CSA amount for a year, EPA considers what portion of existing stocks is "available" for critical uses. As discussed in prior CUE rulemakings, the Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. For example, Decision IX/6 states that "production and consumption, if any, of methyl bromide for critical uses should be permitted only if * * * methyl bromide is not available in sufficient quantity and quality from existing stocks." Decision XX/5, as well as earlier decisions, refers to use of "quantities of methyl bromide from stocks that the Party has recognized to be available." Thus, it is clear that individual Parties have the ability to determine their level of available stocks. Decisions XX/5 and XXI/11 further reinforce this concept by including the phrase "minus available stocks" as a footnote to the United States' authorized level of production and consumption. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

EPA has employed the concept of "available stocks" in determining whether to allocate additional CSAs

beyond the minimum stock amount stipulated by the Parties. In response to stakeholder questions about how EPA derived its CSA amounts, the 2008 CUE rule established a refined approach for determining the amount of existing methyl bromide stocks that is "available" for critical uses. The approach uses a tool called the supply chain factor (SCF). The SCF is EPA's technical estimate of the amount of methyl bromide inventory that would be adequate to meet the need for critical use methyl bromide after an unforeseen domestic production failure. The SCF recognizes the benefit of allowing the private sector to maintain a buffer in case of a major supply disruption. However, the SCF is not intended to set aside or physically separate stocks as an inventory reserve.

2. Calculation of Available Pre-Phaseout Inventory

In this action, EPA is adjusting the authorized level of new production and consumption for critical uses to account for the amount of existing pre-phaseout inventory that is "available" for critical uses. EPA is calculating the amount of existing stocks that is available for critical uses in 2010 based on the SCF and formula introduced in the 2008 CUE final rule (72 FR 74118). EPA is allowing sales of the amount of existing pre-phaseout inventory that the Agency has determined to be available for critical uses by issuing an equivalent number of CSAs on a one-CSA-per-one-kilogram-of-methyl-bromide basis.

EPA calculates the amount of "available" stocks as follows, using the formula adopted in the 2008 CUE rule: $AS_{2010} = ES_{2009} - D_{2009} - SCF_{2010}$, where AS_{2010} is the available stocks on January 1, 2010; ES_{2009} is the existing pre-phaseout stocks of methyl bromide held in the United States by producers, importers, and distributors on January 1, 2009; D_{2009} is the drawdown or estimated drawdown of existing stocks during calendar year 2009; and SCF_{2010} is the supply chain factor for 2010. In the proposed rule, EPA applied this formula using an estimated drawdown for calendar year 2009. EPA reached a preliminary conclusion that the calculated level of "available stocks" on January 1, 2010, would be a negative number. EPA proposed to add an additional step to its determination of the level of CSAs to be allocated in 2010 because simply taking the result of the available stocks calculation would have resulted in an increase in new production before pre-phaseout inventory was depleted. In today's action, EPA is not finalizing the modified approach contained in the proposed rule; however, EPA may consider that approach in a future action. EPA does not need to consider the modified approach further in this action because it has acquired end-of-year inventory data that result in a different conclusion regarding available stocks. As EPA did in the 2009 CUE Rule, EPA is using actual data rather than relying on the estimate in the proposed rule. Using the formula established in the 2008 CUE Rule and the actual inventory data, EPA calculates that there are 1,028,108 kg of "available stocks" in 2010. EPA is therefore allocating this amount as CSAs, following the approach adopted in the 2008 CUE Rule. This calculation and others used to determine the allocation of CUAs and CSAs can be found in the docket.

Existing Stocks. In the above formula, "ES_{2009}" refers to pre-phaseout inventory—methyl bromide that was produced before the January 1, 2005, phaseout date but is still held by domestic producers, distributors, and third-party applicators. It does not include material held by end users. ES_{2009} also does not include critical use methyl bromide that was produced after January 1, 2005, and carried over into subsequent years. Nor does it include methyl bromide produced (1) under the QPS exemption, (2) with Article 5 allowances to meet the basic domestic needs of Article 5 countries, or (3) for feedstock or transformation purposes. EPA considers all pre-phaseout inventory to be suitable for both pre-plant and post harvest uses. Similarly, EPA considers pre-phaseout inventory to be accessible by all users, including those in California and the Southeastern United States.

One commenter disagrees that the entire existing inventory of pre-phaseout stocks is available to critical users. This commenter states that non-CUE users also use pre-phaseout inventory and that there are now a relatively small number of methyl bromide distributors in the U.S. EPA is aware that end users who are not approved critical users can and do access pre-phaseout inventory. As determined in the 2008 CUE Rule, EPA regards this material as "available" because it is owned by someone other than the end user. While a distributor might choose to sell methyl bromide to non-critical users to satisfy prior contracts or internal business decisions, this is not the result of any EPA regulatory constraint. Issues concerning supply of pre-phaseout inventory are addressed in the Response to Comment Document for the 2008 CUE Rule, which is included in the docket for this rulemaking.

Supply Chain Factor. The SCF represents EPA's technical estimate of the amount of pre-phaseout inventory that would be adequate to meet a need for critical use methyl bromide after an unforeseen domestic production failure. As described in the 2008 CUE rule, and the Technical Support Document contained in the docket to this rule, EPA estimates that it would take 15 weeks for significant imports of methyl bromide to reach the U.S. in the event of a major supply disruption. Consistent with the regulatory framework used in the 2008 and 2009 rules, the SCF for 2010 conservatively reflects the effect of a supply disruption occurring in the peak period of critical use methyl bromide production, which is the first quarter of the year. While this 15-week disruption is based on shipping capacity and does not change year to year, other inputs to EPA's analysis do change each year including the total U.S. and global authorizations for methyl bromide and the average seasonal production of critical use methyl bromide in the U.S. Using updated numbers, EPA estimates that critical use production in the first 15 weeks of each year (the peak supply period) currently accounts for approximately 63% of annual critical use methyl bromide demand for 2010. EPA, therefore, estimates that the peak 15-week shortfall in 2010 could be 2,036,000 kg (63% × 3,235,474 kg).

As EPA stated in the 2008 and 2009 CUE Rules, the SCF is not a "reserve" or "strategic inventory" of methyl bromide but is merely an analytical tool used to provide greater transparency. A general discussion of the SCF is in the final 2008 CUE rule (72 FR 74118) and further detail about the analysis used to derive the value for 2010 is provided in the Technical Support Document in the public docket for this rulemaking.

Two commenters object to the use of a supply chain factor in determining an amount of "available stocks" that can be used by critical users. These commenters state that there is no basis for making this allowance for the supposed risk of a catastrophic loss of the methyl bromide production plant. One commenter also states that the calculation is overly conservative because it assumes a catastrophic loss when production is at the peak. The commenter also states that the calculation incorrectly assumes that growers have no alternative to methyl bromide in the event of such a loss. Finally, the commenter states that the purpose for such a reserve is undermined by the fact that EPA is not actually maintaining the inventory for

the event of a catastrophic loss but is instead allowing inventory to be used by non-critical users. EPA has addressed these comments in prior rulemakings; those responses are available in the docket for this rulemaking.

Two commenters also object to EPA's process of determining whether the inventory was "available" through use of the supply chain factor. These commenters request that EPA require that the inventory be exhausted before allowing any additional new production. EPA has addressed these comments in prior rulemakings; those responses are available in the docket for this rulemaking.

Estimated Drawdown. EPA proposed to estimate the drawdown of existing stocks (the D_{2009} term in the above equation) by using a simple linear fit estimation of inventory data from all available years. In the 2009 Rule, EPA utilized end-of-year data and did not have to estimate the drawdown. Commenters on the 2009 CUE rule suggested additional forecasting techniques: Time series forecasting (extrapolating past behavior into the future) and change-point detection methods (change-point detection is the identification of abrupt changes in the generative parameters of sequential data—looking at data and calculating when it changes its slope). EPA did not propose to use these methods in the 2010 Rule because they would require more data than the six data points that EPA has on annual inventory levels. EPA welcomed comment on these techniques for forecasting future drawdown amounts. EPA also welcomed comment on whether the estimate should be limited to a statistical analysis of past inventory levels or whether EPA should collect additional data or consider other factors. EPA suggested in the 2010 proposed rule that it could collect actual data on stocks near the end of the calendar year through EPA's information gathering authority under section 114 of the Clean Air Act. Alternatively, EPA could revise the regulations to add a reporting requirement to facilitate the early collection of this information in future years. EPA did not receive any comments on these alternate methods for calculating the drawdown or additional reporting requirements.

In the final rule, EPA is not pursuing the alternative statistical methods of estimating drawdown discussed above because EPA has received end-of-year reporting data. As in the 2009 CUE Rule, EPA is using reported data and not relying on an estimate of drawdown. In addition, the labeling for methyl bromide is currently being revised through EPA's reregistration process under FIFRA section 4. While this does not affect the 2010 CUE rule, it will likely change methyl bromide use patterns and make previous years' drawdown data less predictive of future use. It may also make it easier to estimate the amount of pre-phaseout inventory that will be used in the future because the uses of inventory will be constrained. This may lessen the impetus for more frequent reporting, which was suggested by commenters. EPA is therefore not including provisions in this rule that would require inventory holders to report more frequently than they do now.

One commenter states that there appeared to be an error in EPA's estimate of the drawdown of inventory during 2009. The Technical Support Document for the 2008 and 2009 CUE Rules state that the 2007 inventory was 7,671,000 kg. This is in contrast to the Technical Support Document for the Proposed Rule which states that the inventory was 7,941,000 kg. EPA explained in the 2009 CUE rule that it corrected its assessment of the amount pre-phaseout inventory that was available on December 31, 2006, which EPA originally stated was 7,671,091 kg. EPA had received late data in 2007 that it did not incorporate into the total inventory level for the year. The corrected value for the amount of pre-phaseout inventory as of December 31, 2006, was 7,941,009 kg. EPA clarified this in the 2009 rule because a change in the inventory value affects any estimates used to calculate future drawdown. That change does not affect this or last year's allocations because they are based on reported data rather than estimates.

Using end-of-year data, EPA calculates that the pre-phaseout methyl bromide inventory, which was 4,271,226 kg on January 1, 2009, was drawn down by 1,207,118 kg during 2009. This results in a pre-phaseout inventory of 3,064,108 kg on January 1, 2010. The actual drawdown in 2009 was less than half of the rate estimated in the proposed rule (1,207 MT compared to 2,834 MT). The pre-phaseout inventory on December 31, 2009, is thus double what the Agency calculated in the proposed rule (3,064 MT compared to 1,437 MT).

3. Approach for Determining Critical Use Amounts

In the proposed rule, EPA calculated "available stocks" using the approach described in Section V.D.2 above. This resulted in a value less than zero, meaning that EPA estimated that in 2010 there would no longer be an amount of pre-phaseout inventory that meets EPA's definition of "available stocks." EPA recognized in the 2008 rule that the formula for calculating "available" stocks would in some future rulemaking yield a number less than the minimum effectively stipulated by the Parties (the difference between the total authorized critical use amount and the authorized amount of new production and imports). In the preambles to the 2008 and 2009 rules, EPA indicated that when that occurred, the Agency would issue CSAs equal to the minimum amount stipulated by the Parties.

In the proposed rule, EPA expressed the concern that if it were to follow the approach set forth in the 2008 rule, new production and import in 2010 could exceed the previous year's level. As explained in the proposed rule, this was an additional circumstance that EPA had not considered when the Agency previously outlined what future actions it might take. To ensure continued progress in reducing U.S. production and import of critical use methyl bromide, EPA proposed to limit 2010 CUAs (*i.e.,* production and import) to the same level as in 2009. EPA proposed to make up the remaining critical need by using its discretion to increase the CSA allocation proportionately. EPA proposed to allocate only the amount of CSAs necessary to make up the difference between the overall U.S. critical need and the CUA amount in the 2009 CUE rule. Three commenters support EPA's proposal not to increase new production from the 2009 levels while one commenter is opposed. The comment in opposition states that it was entirely foreseeable that the amount of new production may have to increase from one year to the next. Second, the commenter in opposition states that the proposed approach to limit new production fails to follow EPA's established procedure for determining CUAs and is therefore an abuse of discretion.

EPA is not finalizing the approach discussed in the proposed rule in today's action because, given the year-end inventory data, application of the existing framework will not increase the amount of new production compared to 2009. EPA is not deciding whether or not a policy limiting new production would be appropriate in some future year because the situation prompting its use no longer exists for this rule. EPA has recalculated "available stocks" using end-of-year inventory data rather than using an estimate of drawdown. The pre-phaseout inventory on December 31, 2009, is double what the Agency calculated in the proposed rule (3,064 MT compared to 1,437 MT). As a result,

EPA now calculates that 1,028,108 kg of pre-phaseout inventory would be "available stocks." In this final rule, EPA is applying its existing framework to determining CSAs and CUAs and is not finalizing the approach limiting new production that was discussed in the proposed rule. EPA may consider that approach in future CUE rulemakings.

EPA continues to recognize that at some date the inventory will be drawn down to the SCF level and then below the SCF even if EPA sets the CSA amount equal to the difference between the total authorized CUE amount and the authorized new production amount. The inventory is a finite resource: EPA has made clear in the framework rule in the context of discussing the carryover amount that it will not allow the inventory to increase. 69 FR 76977. With this action the Agency is allowing 1,028,108 kg of methyl bromide to be supplied from pre-phaseout inventory for critical uses in 2010 by issuing an equivalent number of CSAs, and adjusting the amount of CUAs accordingly. EPA calculates that there will be sufficient pre-phaseout inventory at the beginning of the 2011 control period to satisfy the amount of 2011 inventory drawdown (200,000 kg) for critical uses identified by the Parties in Decision XXI/11.

To summarize, the critical use amounts authorized by the Parties in Decisions XX/5 and XXI/11 for 2010 total 3,235,474 kg. The maximum amount of authorized new production or import as set forth in those two Decisions is 2,765,474 kg, "minus available stocks." Applying the "available stocks" approach finalized in the 2008 CUE Rule, EPA is expecting 1,028,108 kg of 2010 critical use needs to be met from pre-phaseout inventory and thus is issuing CSAs in that amount. As in past years, EPA is adjusting the amount of CUAs accordingly, so that the sum of CUAs and CSAs is not greater than the total amount authorized by the Parties. Under the existing framework, EPA's practice is to allocate a total number of CUAs and CSAs that is less than the total critical use amount authorized by the Parties as necessary to account for carry over amounts of methyl bromide, amounts for research purposes, or for other appropriate reasons, including updated information on alternatives. Each of these reductions is discussed below, but only the carry over value affects this year's allocation amount. As a result, EPA is allowing 1,955,775 kg of new production and import for critical uses in 2010. EPA has provided these calculations in Section V.D.6 below and in a document titled "CUE Calculation Spreadsheet" in the docket.

4. Treatment of Carryover Material

As discussed in the Framework Rule, EPA does not permit the building of stocks of methyl bromide produced or imported after January 1, 2005, under the critical use exemption. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the following year. EPA uses these reports to calculate the amount of methyl bromide produced or imported under the critical use exemption, but not exported or sold to end-users in that year. EPA deducts an amount equivalent to this "carryover," whether pre-plant or post-harvest, from the total level of allowable new production and import in the year following the year of the data report. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing stocks (ES) (which applies to pre-phaseout material) because this would lead to a double-counting of carryover amounts, and a double reduction of critical use allowances (CUAs).

In 2009, companies reported that 3,036,130 kg of critical use methyl bromide were acquired through production or import in 2008. The information reported to EPA is that 2,784,539 kg of critical use methyl bromide were exported or sold to end-users in 2008. EPA calculates that the carryover amount at the end of 2008 was 251,591 kg, which is the difference between the reported amount of critical use methyl bromide acquired in 2008 and the reported amount of exports or sales of that material to end users in 2008 (3,036,130 − 2,784,539 = 251,591 kg). Using the existing framework, EPA is applying the carryover deduction to the new production amount as it has in all prior CUE rules. Therefore, EPA is reducing the amount of new production by 251,591 kg. EPA calculated the carryover amount in the proposed rule though it did not have a direct effect on the CUA numbers given the proposed approach to limit new production.

One commenter states that the carryover amount calculated by EPA is higher than the amount of unsold material. The commenter reiterates suggestions made in prior CUE rules to change the reporting system so that EPA could identify non-reporting companies or alternatively calculate carryover as the amount of methyl bromide companies report as held in inventory. EPA has responded to this comment in previous rules; EPA's responses are available in the docket. The commenter also requests that EPA pursue companies that it suspects are not reporting. EPA stated in the proposed rule that it has contacted companies that it suspects may have purchased or sold methyl bromide but had not submitted reporting forms. EPA received a few late reports totaling 15,686 kg. As a result EPA adjusted the carryover amount in this final rule.

EPA's calculation of the amount of carryover at the end of 2008 is consistent with the method used in previous CUE rules, and with the method agreed to by the Parties in Decision XVI/6, which established the Accounting Framework for critical use methyl bromide, for calculating column L of the U.S. Accounting Framework. The 2008 U.S. Accounting Framework is available in the public docket for this rulemaking. EPA notes that the carryover value in the Accounting Framework is higher by 17 MT than the number contained in this final rule due to additional reports received after EPA provided the Accounting Framework to UNEP.

5. Methyl Bromide Alternatives

EPA considers new data regarding alternatives that were not available at the time the U.S. Government submitted its Critical Use Nomination (CUN) to the Parties, and adjusts the allocation for new production accordingly. For 2010, EPA is not making further reductions in post-harvest or pre-plant critical use allowances to reflect the transition to alternatives because the 2010 CUN applied transition rates for all critical use sectors. The TEAP report of October 2008 included reductions in its recommendations for critical use categories based on the transition rates in the 2010 CUN. The TEAP's recommendations were then considered in the Parties' 2010 authorization amounts, as listed in Decision XX/5. Therefore, transition rates, which account for the uptake of alternatives, have already been applied for authorized 2010 critical use amounts.

Furthermore, the 2012 CUN, which represents the most recent analysis and the best available data for methyl bromide alternatives, does not conclude that transition rates should be increased for 2010. As the 2012 CUN reflects, the United States Government has not found new information that supports changing the 2010 transition rates included in the 2010 CUN and applied by MBTOC. EPA continues to gather information about methyl bromide alternatives through the CUE application process, and by other means.

The 2010 CUN includes transition rates for iodomethane and there is no new information that would suggest changing those rates. Currently, iodomethane is registered for use in 47 States. California has not yet decided whether to register iodomethane for use in the State. EPA did not propose any adjustment based on iodomethane in its proposed rule. Two commenters suggest that EPA make additional reductions to the allocation to reflect the uptake of iodomethane. One commenter states that EPA underestimated the uptake of iodomethane in the 2008 and 2009 CUE rules and cites the amount of iodomethane sold each year and the size of the reduction to the allocations in the 2008 and 2009 rules. EPA calculated the uptake of iodomethane in the critical use nomination for 2010. EPA would revisit that calculation in this rule if new data on market penetration or State registrations warranted such action, as it did in the 2008 and 2009 CUE rules. The commenter fails to recognize that the Agency has already made a reduction in the nomination. EPA has accounted for all State registrations in the 2010 nomination and does not believe additional reductions are warranted.

EPA also stated in its proposed rule that it did not intend to make any adjustments to account for the reduced production of Telone in 2009. Dow AgroSciences commented that they were seeking to increasing production of Telone and intended to restore the availability of this material to full levels by the end of 2009. One commenter states that there may still be some lingering shortages. Another commenter states that even if the supply is not fully restored, growers can use iodomethane or methyl bromide stockpiles. EPA has received additional information on the production and availability of Telone from Dow AgroSciences, which the Agency has entered into the CBI portion of the docket, and based on that data does not believe that the shortage will continue into 2010.

EPA received a dozen comments from pest control companies and end users who use sulfuryl fluoride. These commenters relate their experiences using sulfuryl fluoride and expressed support for its further use in the post harvest sector. One commenter provided additional data in support of sulfuryl fluoride as an effective alternative to methyl bromide. EPA responds to the technical data in the response to comments. Two commenters state that sulfuryl fluoride has been demonstrated to be both effective and economical as a methyl bromide alternative in structural fumigations. These commenters state that EPA should therefore not authorize any structural applications as a critical use and reduce the allocation accordingly. The 2010 CUN reflected uptake of sulfuryl fluoride. As discussed above, EPA does not have economic data to support an increased transition rate or a reduction in the allocation. More information on the uptake of sulfuryl fluoride is found in the 2010 CUN and in the response to comments document.

EPA continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives. EPA has not received any new data that was not considered by the Parties that would lead it to change the transition rates for 2010. Therefore, the final rule does not make any adjustments to account for new information on the uptake of alternatives.

6. Summary of Calculations

The calculations described above for determining the level of new production and critical stock allowances is summarized in the table below:

	Kilograms
Step 1: Calculate supply chain factor:	
U.S. authorization for 2010 in Decision XX/5	3,233,456
U.S. authorization for 2010 in Decision XXI/11	2,018
− Reduction for uptake of alternatives	0
= One year's CUE need	3,235,474
× Percentage of year's production to recover from production failure	62.9%
= Supply Chain Factor	2,036,000
Step 2: Calculate available stocks:	
Existing pre-phaseout inventory on January 1, 2009 ("ES2009")	4,271,226
− Drawdown of inventory during 2009 ("D2009")	1,207,118
− Supply Chain Factor	2,036,000
= Available stocks ("AS2010") = Critical Stock Allowance	1,028,108
Step 3: Calculate carry over:	
Reported as produced/imported in 2008	3,036,130
− Reported as sold in 2008	2,784,539
= Carry over	251,591
Step 4: Calculate new production:	
Total U.S. authorization for 2010 (Decisions XX/5 and XXI/11)	3,235,474
− Critical Stock Allowance (Step 2)	1,028,108
− Carryover (Step 3)	251,591
− Uptake of alternatives	0
= New production = Critical Use Allowance	1,955,775

E. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 7 of Decision XX/5 request Parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2010 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A., V.C., V.D., and V.H. of this preamble. The Agency solicited comments on the technical and economic basis for determining that the uses listed in the proposed rule meet the criteria of the critical use exemption (CUE). The critical use nominations (CUNs) detail how each critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.D., V.G., and

V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket titled "Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America" for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; the development of research and transition plans; and the requests in Decision Ex. I/4(5) and (6) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and include information on the methodology they use to determine economic feasibility, are addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and in ongoing consultations with industry. The National Management Strategy addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

The USG's approach to research changed slightly in the 2010 nomination. In previous years, while the nomination was broad enough to cover both research and non-research uses, the USG nominated a separate, additional amount specifically for research purposes. However, Decision XVII/9 requested that the Parties "endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development." Therefore, when allocating allowances in previous years, EPA subtracted that separate research amount from the Parties' authorized production level for the U.S. This in effect encouraged the use of stocks for research purposes. For 2010, the nomination was again broad enough to cover both research and non-research uses but the USG did not nominate a separate, additional amount specifically for research purposes. Thus, EPA did not propose to adjust the production level to subtract this amount.

One commenter objects to EPA encouraging researchers to use pre-phaseout inventory. They expressed concern that a further reduction in stocks will jeopardize growers' ability to endure a supply chain disruption and note that the higher cost and reduced availability of pre-phaseout inventory will harm research into alternatives if researchers are limited to pre-phaseout inventory. Instead, EPA should increase the level of new production that is dedicated for research purposes. EPA responds that unlike previous years, the nomination did not specifically dedicate an amount for research purposes, thus there is no specific amount by which EPA could increase new production. Second, because EPA is allowing research as a critical use, the Agency is not limiting researchers to inventory. Use of inventory methyl bromide for research could reduce the amounts available in case of a supply chain disruption but EPA does not anticipate the effect will be significant given the small amounts of methyl bromide used for research.

In this final rule, EPA has determined that research on the critical use crops shown in the table in Appendix L to subpart A remains a critical use of methyl bromide. Research on critical use crops is fundamental to the critical use process. Decision IX/6, which sets forth the criteria for a "critical use" determination, requires ongoing research programs in order for a Party to receive critical uses:

> (b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if: (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [*e.g.,* the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes * * *

Though the USG did not request an additional amount for 2010, the nomination remains consistent with past nominations both in discussing how current research affects the use and uptake of alternatives as well as the USG's efforts to conduct research. The nomination states, "As noted in our previous nomination, the USG provides a great deal of funding and other support for agricultural research, and in particular, for research into alternatives for methyl bromide. This support takes the form of direct research conducted by the Agricultural Research Service (ARS) of USDA, through grants by ARS and CSREES, by IR–4, the national USDA-funded project that facilitates research needed to support registration of pesticides for specialty crop vegetables, fruits and ornamentals, through funding of conferences such as MBAO, and through the land grant university system." Consistent with past practice, EPA is not listing research as a separate entry in the table in Appendix L: however, research remains an aspect of the listed critical uses. The USG may or may not nominate additional amounts for research in future years. Also consistent with past rules, EPA continues to request that researchers use pre-phaseout inventory when possible.

F. Emissions Minimization

Decision XX/5, paragraph 11 states that Parties shall request critical users to employ "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." In the judgment of USG scientists, use of virtually impermeable film (VIF) tarps allows pest control with lower application rates while minimizing emissions. The quantity of methyl bromide nominated by the USG reflects the lower application rates necessary when using tarps.

Two commenters ask EPA to require emissions minimization techniques rather than simply encourage them. Rather than mandate emission reduction techniques, EPA will continue to work with the U.S. Department of Agriculture—Agricultural Research Service (USDA–ARS) to promote the techniques on a voluntary basis. As discussed above, the Federal government has invested substantial resources into best practices for methyl bromide use, including emission reduction practices. USDA–ARS has a national outreach effort to publicize the best practices. Also, EPA continues to work on the registration of promising methyl bromide alternatives.

Users of methyl bromide should make every effort to minimize overall emissions of methyl bromide to the extent consistent with State and local laws and regulations. The Agency continues to encourage researchers and users who are successfully utilizing such techniques to inform EPA of their experiences and for applicants to provide such information with their critical use applications. The Agency welcomes information on the implementation of emission minimization techniques and whether

and how further emissions could be reduced further.

G. Critical Use Allowance Allocations

EPA is allocating 2010 critical use allowances for new production or import of methyl bromide up to the amount of 1,955,775 kg (7.7% of baseline) as shown in Table III below. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. The allocation of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

The CUAs are allocated as follows:

TABLE III—ALLOCATION OF CRITICAL USE ALLOWANCES

Company	2010 Critical use allowances for pre-plant uses * (kilograms)	2010 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	1,102,380	86,145
Albemarle Corp.	453,324	35,425
ICL–IP America	250,516	19,576
TriCal, Inc.	7,800	610
Total **	1,814,020	141,755

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to 40 CFR part 82.
** Due to rounding, numbers may not add exactly.

Paragraph six of Decision XX/5 states "that Parties shall endeavor to license, permit, authorize or allocate quantities of critical-use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions authorizing prior critical uses. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

One commenter states that EPA should allocate specifically to each of the Critical Use Categories as authorized by the Parties. The EPA's "lump sum" approach, the commenter asserts, does not guarantee that critical users have access to methyl bromide and it instead allows those with the greatest ability to pay to garner methyl bromide away from other users with approved critical needs. Furthermore, this commenter states that developers of methyl bromide alternatives need assurance that methyl bromide will eventually exit a particular use segment. Allowing an open market for methyl bromide allocation is an economic disincentive for anyone developing alternatives. At a minimum, this commenter supports distinguishing between pre-plant and post-harvest sectors as EPA currently does.

The Framework Rule proposed several options for allocating critical use allowances, including a sector-by-sector approach. The Agency evaluated the various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. For the reasons discussed in the preamble to the 2009 CUE rule (74 FR 19894), the Agency believes that under the approach adopted in the Framework Rule, the actual critical use will closely follow the sector breakout listed in the Parties' decisions. The commenters' concerns are addressed more specifically in the response to comment document.

H. Critical Stock Allowance Allocations

For the reasons discussed above, EPA is allocating critical stock allowances (CSAs) to the entities listed below in Table IV for the 2010 control period in the amount of 1,028,108 kg (4.0% of baseline). This amount reflects the application of the existing framework using end-of-year data rather than an estimate of drawdown rates. In addition, the calculation is based on a higher total U.S. authorization incorporating the additional 2,018 kg authorized by the parties in Decision XXI/11 which added North Carolina and Tennessee strawberry nursery growers to the list of critical uses.

EPA's allocation of CSAs is based on each company's proportionate share of the aggregate inventory. In 2006, the United States District Court for the District of Columbia upheld EPA's treatment of company-specific methyl bromide inventory information as confidential. *NRDC* v. *Leavitt,* 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and the individual CSA allocations are not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule.

EPA received notice that Hy-Yield Bromine and its assets were transferred to a third party named Hy-Yield products, LLC, which is owned by Trinity Manufacturing, LLC. EPA is therefore not issuing critical stock allowances to Hy-Yield Bromine but rather to Hy-Yield Products in this and in subsequent rulemakings.

TABLE III—ALLOCATION OF CRITICAL STOCK ALLOWANCES

Company
Albemarle
Bill Clark Pest Control, Inc.
Burnside Services, Inc.
Cardinal Professional Products
Chemtura Corp.
Degesch America, Inc.
Helena Chemical Co.
Hendrix & Dail
Hy-Yield Products, LLC
ICL–IP America
Industrial Fumigation Company
Pacific Ag
Pest Fog Sales Corp.
Prosource One
Reddick Fumigants
Royster-Clark, Inc.
Trical Inc.
Trident Agricultural Products
UAP Southeast (NC)
UAP Southeast (SC)
Univar

TABLE III—ALLOCATION OF CRITICAL STOCK ALLOWANCES—Continued

Company
Western Fumigation
TOTAL—1,028,108 kilograms

I. Stocks of Methyl Bromide

An approved critical user may purchase methyl bromide produced or imported with CUAs as well as limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of authorized critical uses. The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on the sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. It also established trading provisions that allow critical use allowances (CUAs) to be converted into CSAs. EPA has retained these provisions for the 2010 control period.

The aggregate amount of pre-phaseout methyl bromide reported as being in inventory at the beginning of 2009 is 4,271,226 kg. EPA calculates using end-of-year data that the aggregate inventory on January 1, 2010, was 3,064,108 kg. As in prior years, the Agency will continue to closely monitor CUA and CSA data. Further, as stated in the final 2006 CUE rule, safety valves continue to exist. If an inventory shortage occurs, EPA may consider various options including authorizing the conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses.

One commenter states that EPA should not allow non-critical users access to methyl bromide inventories. Any such action by EPA restricting non-critical users' access to stocks under the Clean Air Act would be discretionary. Nothing in the Protocol or the Clean Air Act mandates that EPA limit drawdown from inventory for such uses. Decision Ex I/3 of the Montreal Protocol, which informs Agency actions on methyl bromide, does not require that individual Parties (such as the U.S.) prohibit the use of stocks by users whose uses fall outside the categories of agreed-upon critical uses. Further detail on the issue of non-critical users' access to pre-phaseout inventory is available in previous CUE preambles and response to comments documents available in the docket. Though EPA is not using authorities under the Clean Air Act to restrict the use of pre-phaseout inventory, EPA is limiting the crops that will legally be able to use methyl bromide through the reregistration process under FIFRA. Users of methyl bromide must meet not only the requirements of the Clean Air Act, but also must comply with all requirements under FIFRA, including limits on the sale of products for pre-planting use for certain crops, and all directions for use on product labeling. EPA disagrees that inventory methyl bromide should not be allowed on any non-CUE crop. However, EPA has determined that the risks posed by the use of methyl bromide, both the acute and chronic toxicological effects as well as its ability to deplete the ozone layer, would be unacceptable without significant risk mitigation measures, including limiting its use to fewer crops.

As explained in the 2008 CUE final rule, the Agency intends to continue releasing the aggregate of methyl bromide stockpile information reported to the Agency under the reporting requirements at 40 CFR 82.13 for the end of each control period. EPA notes that if the number of competitors in the industry were to decline appreciably, EPA would revisit the question of whether the aggregate is entitled to treatment as confidential information and whether to release the aggregate without notice. The aggregate information for 2003 through 2009 is available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a "significant regulatory action." This action is likely to result in a rule that may raise novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The application, recordkeeping, and reporting requirements have already been established under previous Critical Use Exemption rulemakings and this action does not change any of those existing requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0482. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
Agricultural production ..	1112—Vegetable and Melon farming ..... 1113—Fruit and Nut Tree Farming ..... 1114—Greenhouse, Nursery, and Floriculture Production.	0171—Berry Crops ..... 0172—Grapes. 0173—Tree Nuts ..... 0175—Deciduous Tree Fruits (except apple orchards and farms). 0179—Fruit and Tree Nuts, NEC.	$0.75 million.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)
		0181—Ornamental Floriculture and Nursery Products. 0831—Forest Nurseries and Gathering of Forest Products.	
Storage Uses	115114—Postharvest Crop activities (except Cotton Ginning).		$7 million.
	311211—Flour Milling	2041—Flour and Other Grain Mill Products	500 employees.
	311212—Rice Milling	2044—Rice Milling	500 employees.
	493110—General Warehousing and Storage	4225—General Warehousing and Storage	$25.5 million.
	493130—Farm Product Warehousing and Storage.	4221—Farm Product Warehousing and Storage.	$25.5 million.
Distributors and Applicators.	115112—Soil Preparation, Planting and Cultivating.	0721—Crop Planting, Cultivation, and Protection.	$7 million.
Producers and Importers.	325320—Pesticide and Other Agricultural Chemical Manufacturing.	2879—Pesticides and Agricultural Chemicals, NEC.	500 employees.

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This rule only affects entities that applied to EPA for an exemption to the phaseout of methyl bromide. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA estimated in 2008 that this had declined to 2,000 end users of critical use methyl bromide. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. 603–604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action will confer a benefit to users of methyl bromide. We have therefore concluded that this rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. The action imposes no enforceable duty on any State, local or Tribal governments or the private sector. Instead, this action provides an exemption for the manufacture and use of a phased out compound and does not impose any new requirements on any entities. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule is expected to primarily affect producers, suppliers, importers, exporters, and users of methyl bromide. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule does not significantly or uniquely affect the communities of Indian Tribal governments nor does it impose any enforceable duties on communities of Indian Tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order No. 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this rule is not

likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this final rule. EPA believes, however, that this action affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this final rule will impact all affected populations equally because ozone depletion is a global environmental problem with environmental and human effects that are, in general, equally distributed across geographical regions.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 3, 2010.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: April 27, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, 40 CFR Part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Section 82.8 is amended by revising paragraph (c)(1) table and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2010 critical use allowances for pre-plant uses * (kilograms)	2010 critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp., A Chemtura Company	1,102,380	86,145
Albemarle Corp	453,324	35,425
ICL–IP America	250,516	19,576
TriCal, Inc	7,800	610
Total **	1,814,020	141,755

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

** Due to rounding, numbers do not add exactly.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2010 on a pro-rata basis in relation to the inventory held by each.

Company	Company	Company
Albemarle	Pacific Ag	Western Fumigation
Bill Clark Pest Control, Inc.	Pest Fog Sales Corp.	TOTAL—1,028,108 kilograms
Burnside Services, Inc.	Prosource One	
Cardinal Professional Products	Reddick Fumigants	
Chemtura Corp.	Royster-Clark, Inc.	
Degesch America, Inc.	Trical Inc.	
Helena Chemical Co.	Trident Agricultural Products	
Hendrix & Dail	UAP Southeast (NC)	
Hy-Yield Products, LLC	UAP Southeast (SC)	
ICL–IP America	Univar	
Industrial Fumigation Company		

■ 3. Appendix L to Subpart A is revised to read as follows:

Appendix L to Part 82 Subpart A—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2010 Control Period

Approved critical uses Column A	Approved critical user and location of use Column B	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation Column C
	PRE-PLANT USES	
Cucurbits	(a) Growers in Delaware, Maryland, and Michigan	Moderate to severe soilborne disease infestation.
	(b) Growers in Georgia and Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe root knot nematode infestation.
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium collar, crown and root rot. Moderate to severe southern blight infestation. Restrictions on alternatives due to karst topographical features.
	(c) Michigan growers	Moderate to severe soilborne disease infestation.
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation.
	(c) Government-owned seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin.	Moderate to severe weed infestation including purple and yellow nutsedge infestation. Moderate to severe Canada thistle infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation.
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode or worm infestation.
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington.	Moderate to severe yellow nutsedge infestation. Moderate to severe soilborne disease infestation.
	(f) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe Canada thistle infestation. Moderate to severe nutsedge infestation. Moderate to severe nematode infestation.
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in Washington, and members of the California Association of Nursery and Garden Centers representing Deciduous Tree Fruit Growers.	Moderate to severe nematode infestation. Medium to heavy clay soils. Local township limits prohibiting 1,3-dichloropropene.
	(b) California rose nurseries	Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.

Approved critical uses Column A	Approved critical user and location of use Column B	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation Column C
Orchard Replant	(a) California stone fruit, table and raisin grape, wine grape, walnut, and almond growers.	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Replanted orchard soils to prevent orchard replant disease. Medium to heavy soils. Local township limits prohibiting 1,3-dichloropropene.
Ornamentals	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
	(b) Florida growers	Moderate to severe weed infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Michigan herbaceous perennial growers	Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Moderate to severe yellow nutsedge and other weed infestation.
	(d) New York growers	Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation.
Peppers	(a) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe pythium root, collar, crown and root rots.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation, or moderate to severe pythium root and collar rots. Moderate to severe southern blight infestation, crown or root rot. Restrictions on alternatives due to karst topographical features.
	(d) Michigan growers	Moderate to severe soilborne disease infestation.
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene. Time to transition to an alternative.
	(b) Florida growers	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe soilborne disease infestation. Carolina geranium or cut-leaf evening primrose infestation. Restrictions on alternatives due to karst topographical features and soils not supporting seepage irrigation.
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Moderate to severe black root and crown rot.
Strawberry Nurseries	(a) California growers	Moderate to severe soilborne disease infestation. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation.

Approved critical uses	Approved critical user and location of use	Limiting critical conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation
	(b) North Carolina and Tennessee growers	Moderate to severe black root rot. Moderate to severe root-knot nematode infestation. Moderate to severe yellow and purple nutsedge infestation.
Sweet Potato Slips	(a) California growers	Local township limits prohibiting 1,3-dichloropropene.
Tomatoes	(a) Michigan growers	Moderate to severe soilborne disease infestation. Moderate to severe fungal pathogen infestation.
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia growers.	Moderate to severe yellow or purple nutsedge infestation. Moderate to severe soilborne disease infestation. Moderate to severe nematode infestation. Restrictions on alternatives due to karst topographical features and, in Florida, soils not supporting seepage irrigation.
	(c) Maryland growers	Moderate to severe fungal pathogen infestation.
POST-HARVEST USES		
Food Processing	(a) Rice millers in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe beetle, weevil, or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(b) Pet food manufacturing facilities in the U.S. who are members of the Pet Food Institute.	Moderate to severe beetle, moth, or cockroach infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(c) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
	(d) Members of the National Pest Management Association treating processed food, cheese, herbs and spices, and spaces and equipment in associated processing and storage facilities.	Moderate to severe beetle or moth infestation. Presence of sensitive electronic equipment subject to corrosion. Time to transition to an alternative.
Commodities	(a) California entities storing walnuts, beans, dried plums, figs, raisins, and dates (in Riverside county only) in California.	Rapid fumigation required to meet a critical market window, such as during the holiday season.
Dry Cured Pork Products	(a) Members of the National Country Ham Association and the Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney and Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermested beetle infestation. Ham mite infestation.

[FR Doc. 2010–10226 Filed 4–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 100217094–0195–02]

RIN 0648–AY57

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule increases the commercial and recreational quotas for red snapper and closes the recreational red snapper component of the Gulf of Mexico (Gulf) reef fish fishery at 12:01 a.m., local time, July 24, 2010. The intended effect of this rule is to help

achieve optimum yield by relaxing red snapper harvest limitations consistent with the findings of the recent stock assessment for this species.

DATES: This final rule is effective June 2, 2010.

ADDRESSES: Copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone 813–348–1630; fax 813–348–1711; e-mail *gulfcouncil@gulfcouncil.org*; or may be downloaded from the Council's website at *http://www.gulfcouncil.org/*.

FOR FURTHER INFORMATION CONTACT: Peter Hood, 727–824–5308.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 30, 2010, NMFS published a proposed rule for the regulatory amendment and requested public comment (75 FR 15665). The proposed rule and the regulatory amendment outline the rationale for the measures contained in this final rule. Additional rationale is provided here and in the comments and responses section.

Management Measures Contained in this Final Rule

Revisions to Commercial and Recreational Quotas

The regulatory amendment sets the total allowable catch (TAC) for 2010 and subsequent fishing years for Gulf red snapper at 6.945 million lb (3.150 million kg). Based on the recent red snapper assessment update, the overfishing limit (OFL), as endorsed by the Council's Scientific and Statistical Committee (SSC) for 2010 is 9.26 million lb (4.2 million kg). However, because there is considerable uncertainty around assessment model results, the SSC recommended an acceptable biological catch (ABC) of 6.945 million lb (3.150 million kg), which is 25 percent below the OFL, to account for scientific uncertainty and in accordance with the National Standard 1 Guidelines (74 FR 3178, January 16, 2009). When setting the TAC for red snapper in 2010, the Gulf Council cannot exceed the ABC recommended by the Council's SSC. Based on the current commercial and recreational allocations (51 percent commercial and 49 percent recreational), red snapper TAC is implemented through this final rule by setting the commercial quota for Gulf red snapper at 3.542 million lb (1.607 million kg) and the recreational quota at 3.403 million lb (1.544 million kg).

Closure Date of the Recreational Red Snapper Fishing Season

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper fishery in Federal waters when the quota is met or projected to be met. Finalized 2009 recreational landings data indicate that the recreational red snapper quota is projected to be met on or by July 23, 2010. Therefore, NMFS will close the recreational red snapper fishing season at 12:01 a.m., local time, July 24, 2010, which constitutes a 53–day fishing season. As compared to the recreational fishing season under the existing 2.45 million lb (1.11 million kg) quota, and assuming similar effort and catch rates for 2010, the season would have been 27 to 34 days. However, taking into account the 2.09 million lb (0.95 million kg) quota overage in 2009 and the new 3.403 million lb (1.544 million kg) quota implemented through this final rule, the recreational fishing season will remain open for 53 days in 2010. These management measures achieve the goal of National Standard 1 of the Magnuson-Stevens Act, which states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield for the fishery.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 260 comments, including 249 from private citizens, 6 from governmental or civic organizations, 4 from recreational fishing organizations, and 1 from an environmental group.

Comment 1: The recreational and commercial quotas should be increased and the season length should either match or exceed the 2009 75–day season.

Response: The 2009 red snapper stock assessment update indicated that the red snapper stock in the Gulf of Mexico is improving under the current rebuilding plan. This is consistent with the observations provided in the comments. Although the stock is still considered overfished, it is no longer undergoing overfishing and harvest levels may be increased.

For the recreational fishery, even though the quota will be increased, a 2010 season of 75 days or more is not justified or appropriate. The 75–day season in 2009 resulted in an overage of the recreational quota by approximately 2.09 million lb (0.95 million kg). Projections indicate that for recreational catch to not exceed the new 3.403 million lb (1.544 million kg) quota in 2010, the season length may only be 53 days long. If the quota were to remain at 2.45 million lb (1.11 million kg), projections indicate the fishery could stay open for 27–34 days.

NMFS used historical landings and changes in regulations to project the length of the season. Landings information are obtained from the Marine Recreational Fisheries Statistics Survey, including the for-hire charter survey; Southeast Fisheries Science Center headboat survey; and Texas Parks and Wildlife Department charter and private/rental creel survey. Season lengths are then projected under different management scenarios. Details of how these data are applied to project season length may be found at: *http://sero.nmfs.noaa.gov/sf/GulfRedSnapperHomepage.htm*.

Comment 2: The bag limit should be increased or the size limit should be decreased because the stock condition is improving or because of possible increases in discards and discard mortality from the increased stock abundance.

Response: For the Council and NMFS to increase the bag limit or reduce the size limit, under an increased quota, the trade off would be to reduce the length of the season. However, comments received in response to the proposed rule and comments received by the Council requested the season remain open for as long as possible. In developing the regulatory amendment supporting an increase in the total allowable catch, the Council decided to leave size or bag limits unchanged to facilitate lengthening the season. The Council and NMFS have addressed measures to reduce discard mortality in other actions such as the requirement for dehookers, circle hooks, and venting tools.

Comment 3: The commercial and recreational quotas should be based on a total allowable catch of 9.26 million lb (4.2 million kg).

Response: Based on the recent red snapper assessment update, the OFL, as endorsed by the Council's SSC for 2010 is 9.26 million lb (4.2 million kg). The OFL is an estimate of the catch level above which overfishing is occurring. At its February meeting, the Council voted on and NMFS is implementing a TAC of

6.945 million lb, based on the SSC's ABC recommendation, which is 75 percent of the OFL. The ABC is a level of a stock or stock complex's annual catch that accounts for scientific uncertainty in the estimate of OFL. Because there is considerable uncertainty around assessment model results, the SSC determined that setting the ABC at 75 percent of the OFL would allow the red snapper stock to continue to rebuild within the rebuilding plan timeframe. Section 302(h)(6) of the Magnuson-Stevens Act mandates that each Council "may not exceed the fishing level recommendations of its SSC" and section (g)(1)(B) identifies these fishing level recommendation categories to include: "ABC, preventing overfishing, maximum sustainable yield, and achieving rebuilding strategies." Therefore, the greatest level of TAC the Council may recommend, based on the ABC recommended by the SSC, is 6.945 million lb (3.150 million kg).

Comment 4: Any increase in the commercial quota should be distributed to individual fishing quota (IFQ) shareholders who have lower catch histories as a result of having Class 2 licenses (200–lb (90.7–kg) trip limit).

Response: The current red snapper IFQ program distributes increases and decreases in the commercial quota among IFQ participants based on the number of IFQ shares they own. The increased commercial quota will be distributed proportionately among current red snapper IFQ shareholders as of the effective date of this final rule, pursuant to Amendment 26 to the FMP. If any share transfers are pending the day the rule becomes effective, additional allocation will go to the original share holder. To change this form of distribution would require a plan amendment to the Reef Fish FMP and, therefore, is beyond the scope of the regulatory amendment and this final rule.

Comment 5: The allocation between commercial and recreational sectors should be changed to favor the recreational fishery.

Response: Allocations in the red snapper component of the Gulf reef fish fishery (51 percent commercial and 49 percent recreational) used in the regulatory amendment are based on historical percentages harvested by user groups during the base period of 1979 to 1987. To change the current allocation would require a plan amendment to the FMP and, therefore, is beyond the scope of the regulatory amendment and this final rule.

Comment 6: The science upon which the recreational season length estimate is based is unreliable and should not be used to set season length or estimate recreational levels relative to the quota.

Response: The methods and data used to project the recreational season length are thoroughly reviewed by the Southeast Fisheries Science Center to ensure best scientific practices are followed. In addition, the stock assessment used to estimate the 2010 red snapper season length is based on the Southeast Data, Assessment, and Review (SEDAR) process. The SEDAR process was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. The SEDAR process seeks improvements in the scientific quality of stock assessments, including attempts to place greater relevance on historical and current information to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. The SEDAR process is organized around three workshops. The data workshop documents, analyzes, and reviews data sets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommends the most appropriate values for critical population parameters and management considerations. Recent assessments of the red snapper stock were conducted within this process. All workshops and Council-initiated meetings to review the assessment were open to the public and included constituents on the various SEDAR panels that reviewed the data and provided recommendations on management measures.

Comment 7: The estimate of the number of potentially affected entities in the for-hire fleet is incorrect; there have never been more than 1,350 active permits in the fishery.

Response: In the proposed rule, NMFS stated, "On December 23, 2009, there were 1,266 active Gulf reef fish for-hire permits" and "Because of the extended renewal period, numerous permits may be expired but renewable at any given time of the year. It is estimated that the total number of permits (and associated vessels) active for some portion of the entire calendar year is a few hundred more than the number of permits active on any given date." When the moratorium on for-hire reef fish permits was established in 2003, NMFS initially issued 1,625 moratorium reef fish permits. NMFS agrees the number of permits issued has continually declined since then. Since publication of the proposed rule, NMFS has tabulated the number of unique reef fish for-hire permits that were valid (non-expired) and, therefore, able to be fished during the 2009 calendar year. This number is 1,424, or 158 more than the number of active permits reported in the proposed rule. NMFS believes that some confusion regarding the appropriate totals may be attributed to conflicting definitions of the term "active" in the context of a permit. The NMFS definition of the term "active" refers to a non-expired permit at a point in time, and does not necessarily denote a permit for a vessel that actively fished. It is possible that the comment referred to the number of permits for vessels that actively fished rather than the number of valid permits. Because logbooks are not required in this sector, available data do not allow determination of the number of permits for vessels that actually fished.

Comment 8: Although the recreational quota is being increased, a reduced season will cause economic harm to fishing communities dependent on recreational fishing.

Response: The 2010 season will be shorter than the 2009 season. However, the 2009 season is not the appropriate baseline to use for analysis of the effects of the 2010 TAC increase. The recreational sector exceeded the red snapper quota by approximately 2.09 million lb (0.95 million kg) in 2009. Section 407(d) of the Magnuson-Stevens Act mandates NMFS to close the recreational red snapper component of the Gulf reef fish fishery when the red snapper quota is met or projected to be met. Therefore, the correct baseline for analysis of the expected effects of the 2010 TAC increase is the season that would be expected to occur in the absence of the TAC increase and not the 75–day season that occurred in 2009. As a result, while the 2010 season will be shorter than the 2009 season and fishing may not be as profitable, the 2010 season will be longer than the season that would occur in the absence of the TAC increase, and economic benefits to fishing communities will increase relative to conditions that would occur in 2010 in the absence of the TAC increase.

Classification

The Administrator, Southeast Region, NMFS, determined that the regulatory amendment is necessary for the

conservation and management of the red snapper component of the Gulf reef fish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 27, 2010.

Samuel D. Rauch III,

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

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.42, paragraphs (a)(1)(i) introductory text and (a)(2)(i) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) Red snapper -3.542 million lb (1.607 million kg), round weight.

* * * * *

(2) * * *

(i) Recreational quota for red snapper. The recreational quota for red snapper is 3.403 million lb (1.544 million kg), round weight.

* * * * *

[FR Doc. 2010–10238 Filed 4–28–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0911161406–0195–04]

RIN 0648–AY37

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Correction

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

ACTION: Final rule; correction.

SUMMARY: This action corrects the SUPPLEMENTARY INFORMATION section to a final rule published in the **Federal Register** on April 20, 2010, which erroneously waived the 30 day delay in effective date. A 30–day delay in effectiveness will allow fishermen to come into compliance with the terms of the rule, as was originally intended, without compromising any other aspect of the fishery. NMFS will not enforce the requirement that owners be onboard vessels unless otherwise required by statute or regulation.

DATES: Effective May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the final rule, published on April 20, 2010, that revised the Individual Fishing Quota Program for the sablefish and halibut fisheries off Alaska (75 FR 20526), make the following correction in the SUPPLEMENTARY INFORMATION section. On page 20527, in the second column, delete this paragraph:

"For the same reasons, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30 day delay in effective date."

Dated: April 27, 2010.

Samuel D. Rauch III,

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

[FR Doc. 2010–10237 Filed 4–28–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XW20

Fisheries of the Economic Exclusive Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 28, 2010, through 1200 hrs, A.l.t., July 1, 2010.

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

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

The second seasonal apportionment of the Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA is 300 metric tons as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010), for the period 1200 hrs, A.l.t., April 1, 2010, through 1200 hrs, A.l.t., July 1, 2010.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and

species groups that comprise the deep-water species fishery include sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. This closure does not apply to fishing by vessels participating in the cooperative fishery in the Rockfish Program for the Central GOA.

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 the deep-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 27, 2010.

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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: April 27, 2010.

James P. Burgess

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

[FR Doc. 2010–10241 Filed 4–28–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 84
Monday, May 3, 2010

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2010–BT–STD–0005]

RIN 1904–AC15

Energy Conservation Program for Consumer Products: Energy Conservation Standards for Certain Small Diameter, Elliptical Reflector, and Bulged Reflector Incandescent Reflector Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of a framework document.

SUMMARY: Pursuant to the Energy Policy and Conservation Act (EPCA), the U.S. Department of Energy (DOE) is preparing a notice of proposed rulemaking regarding energy conservation standards for certain incandescent reflector lamps (IRLs) that have elliptical reflector (ER) or bulged reflector (BR) bulb shapes, and for certain IRLs with diameters of 2.50 inches. DOE will hold a public meeting to discuss and receive comments on the product classes that DOE plans to analyze for the purpose of amending energy conservation standards for certain IRLs, and the analytical approach, models, and tools that DOE is using to evaluate standards for these products. DOE encourages written comments on these subjects. To inform interested parties and facilitate this process, DOE has prepared a framework document describing the analytical approaches DOE anticipates using to evaluate potential standards for these lamps.

DATES: DOE will hold a public meeting on Wednesday, May 26, 2010 from 9 a.m. to 5 p.m. in Washington, DC. DOE must receive requests to speak at the public meeting before 4 p.m., Wednesday, May 12, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Wednesday, May 19, 2010. DOE will accept comments, data, and information before and after the public meeting, but no later than June 17, 2010.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585–0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

Any comments submitted must identify the notice of public meeting (NOPM) for Energy Conservation Standards for Certain Incandescent Reflector Lamps, and provide the docket number EERE–2010–BT–STD–0005 and/or regulatory information number (RIN) 1904–AC15. Comments may be submitted using any of the following methods:

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

2. *E-mail: IRL–2010–STD–0005@ee.doe.gov.* Include docket number EERE–2010–BT–STD–0005 and/or RIN: 1904–AC15 in the subject line of the message.

3. *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Public Meeting for Certain Incandescent Reflector Lamps, EE–2009–BT–STD–0022, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. Please submit one signed paper original.

Docket: For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room. DOE's framework document is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/incandescent_lamps.html.*

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Sullivan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. E-mail: *Margaret.Sullivan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6291 *et seq.*) (EPCA or the Act) established the Energy Conservation Program for Consumer Products Other Than Automobiles, covering major household appliances. Subsequent amendments expanded Title III of EPCA to include additional consumer products and certain commercial and industrial equipment. In particular, the Energy Policy Act of 1992 (EPACT 1992) included amendments to EPCA that added as covered products certain IRLs with wattages of 40 watts (W) or higher, and that established energy conservation standards for these IRLs. In defining the term "incandescent reflector lamp," EPACT 1992 excluded lamps with ER and BR bulb shapes, and with diameters of 2.75 inches or less. Therefore, such IRLs were neither included as covered products nor subject to EPCA's standards for IRLs.

However, section 322(a)(1) of the Energy Independence and Security Act

of 2007 (EISA 2007) subsequently amended EPCA to expand the Act's definition of "incandescent reflector lamp" to include lamps with a diameter between 2.25 and 2.75 inches, as well as lamps with ER, BR, bulged parabolic aluminized reflector (BPAR), or similar bulb shapes. (42 U.S.C. 6291(30)(C)(ii) and (F)) Consequently, these lamps became covered products subject to EPCA's standards for IRLs, except that section 322(b) of EISA 2007 also amended EPCA to exempt from the IRL standards the following categories of these lamps: (1) Lamps rated 50 watts or less that are ER30, BR30, BR40, or ER40; (2) lamps rated 65 watts that are BR30, BR40, or ER40 lamps; and (3) R20 incandescent reflector lamps rated 45 watts or less (lamps that have a diameter of 2.5 inches or less, such as R20 lamps, are commonly referred to as small diameter lamps). (42 U.S.C. 6295(i)(1)(C)) (Hereafter, DOE refers to these lamps collectively as the "exempt IRLs.")

In a recent rulemaking to consider amending EPCA's standards for IRLs and certain other types of lamps, DOE initially concluded that it lacked authority to set standards for the exempt IRLs. 74 FR 16920, 16930 (April 13, 2009). DOE also concluded, therefore, that these lamps were not covered by the EPCA directive (42 U.S.C. 6295(i)) that DOE consider amending the Act's standards for IRLs and other lamps. However, upon consideration of the comments it received in that rulemaking, DOE decided to reexamine these conclusions. 74 FR 16920, 16930–31 (April 13, 2009); 74 FR 34080, 34092 (July 14, 2009).

DOE has undertaken this reexamination and has now concluded, for the reasons that follow, that it has the authority under EPCA to adopt standards for the exempt IRLs, and that these lamps are covered by the directive in 42 U.S.C. 6295(i) to amend EPCA's standards for IRLs. First, by amending the definition of "incandescent reflector lamp" (42 U.S.C. 6291(30)(C)(ii) and (F)), EISA 2007 effectively brought ER, BR, and small diameter lamps into the Federal energy conservation standards program as covered product, thereby granting DOE regulatory authority. Additionally, although 42 U.S.C. 6295(i)(1)(C) exempts certain ER, BR, and small diameter lamps from statutorily-prescribed standards, EISA 2007 grants DOE authority to amend the standards laid out in 42 U.S.C. 6295(i)(1), which includes subparagraph (C). As a result, the statutory text did not exempt the bulbs from future regulation, only from the specified minimum standards in 42 U.S.C. 6295(i)(1). Consequently, DOE is conducting this rulemaking to address the potential for development of energy conservation standards for the exempt IRLs.

DOE must design any new or amended standard for these products to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Any standard must also result in significant conservation of energy. (42 U.S.C. 6295(o)(2)(A) and (3)) To determine whether a proposed standard is economically justified, DOE must, after receiving comments on the proposed standard, determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, weighing the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of products subject to the standard;
2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products which are likely to result from the imposition of the standard;
3. The total projected amount of energy savings likely to result directly from the imposition of the standard;
4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;
5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;
6. The need for national energy conservation; and
7. Other factors the Secretary [of Energy] considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

II. History of Standards Rulemaking for ER, BR, and Small Diameter Incandescent Reflector Lamps

A. Background

As indicated above, EISA 2007 amended EPCA both to add as covered products the exempt IRLs (42 U.S.C. 6291(30)(C)(ii) and (F)) and to exempt them from EPCA's energy conservation standards for IRLs (42 U.S.C. 6295(i)(1)(C)). As also indicated above, DOE initially concluded that it lacked authority to adopt standards for the exempt IRLs. Accordingly, in the recent lamps standards rulemaking, DOE's analyses did not examine whether standards for these IRLs might be warranted. (74 FR 34080, July 14, 2009) Based upon a reexamination of its authority, DOE decided to conduct this separate rulemaking to assess energy conservations standards for the exempt IRLs.

B. Current Rulemaking Process

This NOPM represents the first step in the process to consider adoption of energy conservation standards for the exempt IRLs. Because the previous rulemaking for IRLs was completed relatively recently, DOE possesses methodologies for all stages of the analysis that have already been vetted and revised according to public comments. Accordingly, DOE intends to present the results of its analyses in the notice of proposed rulemaking (NOPR) phase. DOE is issuing this NOPM with the intention of receiving as much feedback as possible regarding the methodologies, data, and key assumptions that will be used for the analyses before performing the NOPR analyses. The analyses and proposed methodologies that will be used for the NOPR phase of this rulemaking are described in detail in the framework document, available at the web link provided in the **ADDRESSES** section of this notice.

III. Summary of the Analyses To Be Performed

For the exempt IRLs, DOE is planning to conduct in-depth technical analyses for the NOPR in the following areas: (1) Engineering; (2) energy-use characterization; (3) product price; (4) life-cycle cost (LCC) and payback period (PBP); (5) national impacts analysis (NIA); (6) manufacturer impact analysis; (7) utility impact analysis; (8) employment impact analysis; (9) environmental assessment; and (10) regulatory impact analysis. DOE will also conduct several other analyses that support those previously listed, including the market and technology assessment, the screening analysis (which contributes to the engineering analysis), and the shipments analysis (which contributes to the national impact analysis). These analyses are described in further detail below. In the framework document, DOE describes the methodologies and key data sources for these analyses, and sets forth issues for which DOE seeks public comment. The framework document is available at the web address given in the **ADDRESSES** section of this notice.

A. Engineering Analysis

The engineering analysis establishes the relationship between the manufacturer selling price and the

efficiency of the product. This relationship serves as the basis for cost-benefit calculations for individual consumers, manufacturers, and the nation. The engineering analysis identifies representative baseline models, which is the starting point for analyzing technologies that provide energy efficiency improvements. A baseline model refers to a model or models having features and technologies typically found in the least efficient, most common products currently offered for sale. Section 2.5 of the framework document discusses the engineering analysis.

B. Energy Use Characterization

The energy use characterization provides estimates of annual energy consumption for exempt IRL, which DOE uses in the LCC and PBP analyses and the NIA. DOE develops energy consumption estimates for all of the product classes analyzed in the engineering analysis as the basis for its energy use estimates. Section 2.6 of the framework document provides detail on the energy use characterization.

C. Life-Cycle Cost and Payback Period Analyses

The LCC and PBP analyses determine the economic impact of potential standards on individual consumers. The LCC is the total consumer expense for a product over the life of the product. The LCC analysis compares the LCCs of products designed to meet possible energy conservation standards with the LCCs of the products likely to be installed in the absence of standards. DOE determines LCCs by considering (1) Total installed cost to the purchaser (which consists of manufacturer selling price, sales taxes, distribution chain markups, and installation cost); (2) the operating expenses of the products (energy use and maintenance); (3) product lifetime; and (4) a discount rate that reflects the real consumer cost of capital and puts the LCC in present-value terms. The PBP represents the number of years needed to recover the increase in purchase price (including installation cost) of more efficient products through savings in the operating cost of the product. PBP is equal to the change in total installed cost due to increased efficiency divided by the change in annual operating cost from increased efficiency. Section 2.8 of the framework document provides detail on the LCC and PBP analyses.

D. National Impact Analysis

The NIA estimates the national energy savings (NES) and the net present value (NPV) of total consumer costs and savings expected to result from new standards at specific efficiency levels (referred to as candidate standard levels). DOE calculates NES and NPV for each candidate standard level as the difference between a base-case forecast (without new standards) and the standards-case forecast (with standards). DOE determines national annual energy consumption by multiplying the number of units in use by the average unit energy consumption. Cumulative energy savings are the sum of the annual NES determined over a specified time period. The national NPV is the sum over time of the discounted net savings each year, which consists of the difference between total operating cost savings and increases in total installed costs. Critical inputs to this analysis include shipments projections, retirement rates (based on estimated product lifetimes), and estimates of changes in shipments and retirement rates in response to changes in product costs due to standards. Section 2.10 of the framework document provides detail on the NIA.

E. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (MIA) is to identify and quantify the likely impacts of amended energy conservation standards on manufacturers of exempt IRL. Using industry research, public comments, and interviews with manufacturers and other interested parties, DOE will analyze and consider a wide range of quantitative and qualitative industry impacts that may occur due to amended energy conservation standards. Based on the information gathered during interviews and other research, DOE will assess impacts on competition, manufacturing capacity, employment, and regulatory burden. Section 2.12 of the framework document provides detail on the MIA.

F. Utility Impact Analysis

The utility impact analysis examines the effects of amended energy conservation standards on the installed generation capacity of electric, gas, and oil utilities. The utility impact analysis reports the changes in installed capacity and generation between the base case and the standards cases that result from each standard level by plant type. Section 2.13 of the framework document provides detail on the utility impact analysis.

G. Employment Impact Analysis

The employment impact analysis will estimate indirect national job creation or elimination resulting from possible standards. Indirect employment impacts may result from expenditures shifting between goods (the substitution effect) and changes in income and overall expenditure levels (the income effect) that occur due to the standards. DOE defines indirect employment impacts from standards as net jobs eliminated or created in the general economy as a result of increased spending driven by increased equipment prices and reduced spending on energy. Section 2.14 of the framework document provides detail on the employment impact analysis.

H. Environmental Assessment

The purpose of the environmental assessment is to quantify and consider the environmental effects of amended energy conservation standards for exempt IRL. The environmental assessment will assess impacts of amended energy conservation standards on the following types of energy-related emissions—carbon dioxide (CO_2), oxides of nitrogen (NO_X), sulfur dioxide (SO_2), and mercury (Hg). As part of the environmental assessment, DOE plans to monetize the benefits associated with emissions reductions using a range of values. Section 2.15 and 2.16 of the framework document provide detail on the environmental assessment and monetization.

I. Regulatory Impact Analysis

The regulatory impact analysis addresses the potential for non-regulatory approaches to supplant or augment energy conservation standards in order to improve the energy efficiency or reduce the energy consumption of the products covered under this rulemaking. DOE will base its assessment on the actual impacts of any such initiatives to date, but will also consider information presented regarding the impacts that any existing initiative might have in the future. Section 2.17 of the framework document provides detail on the regulatory impact analysis.

J. Additional Supporting Analyses

DOE will also conduct several analyses that support the analyses listed above, including the market and technology assessment and the screening analysis, which contribute to the engineering analysis, and the shipments analysis, which contributes to the NIA. DOE also conducts an LCC subgroup analysis, which evaluates economic impacts on selected groups of consumers who might be adversely affected by a change in the national energy conservation standards for the covered products. Please see the framework document for further details on these analyses.

IV. Public Participation

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Beginning with the NOPM, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process.

Accordingly, DOE encourages those who wish to participate in the public meeting to obtain the framework document from DOE's Web site and to be prepared to discuss its contents. However, public meeting participants need not limit their comments to the topics identified in the framework document. DOE is also interested in receiving views and information concerning other relevant issues that participants believe would affect energy conservation standards for these products or that DOE should address in the NOPR.

Furthermore, DOE welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by June 17, 2010, comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for the exempt IRLs.

The public meeting will be conducted in an informal, conference style. A court reporter will be present to record the minutes of the meeting. There shall be no discussion of proprietary information, costs or prices, market shares, or other commercial matters regulated by United States antitrust laws.

After the public meeting and the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a NOPR which will be published in the **Federal Register**. The NOPR will include proposed energy conservation standards for the products covered by the rulemaking, and members of the public will be given an opportunity to submit written and oral comments on the proposed standards.

Issued in Washington, DC, on April 23, 2010.

Cathy Zoi,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 2010–10104 Filed 4–30–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0458; Directorate Identifier 2010–CE–023–AD]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE GMBH & CO KG Models G102 ASTIR CS and G102 STANDARD ASTIR III Gliders

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. 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 an annual inspection, a water ballast hose connector was found disconnected from the fuselage wall of an Astir CS.

The investigation has shown that the hose-fuselage connection bonding has been degraded over years of service.

This condition, if not corrected, could lead to the following consequences:

—The water contained in the wing tanks could run down into the fuselage and fuselage tail which could cause a displacement of the sailplane centre of gravity and consequently may lead to the loss of the sailplane controllability, or/and

—The loosened hose may jam the flight controls (push rods) and consequently may lead to the loss of the sailplane controllability.

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 June 17, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

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–2010–0458; Directorate Identifier 2010–CE–023–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2010–0053R1, dated April 14, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

During an annual inspection, a water ballast hose connector was found disconnected from the fuselage wall of an Astir CS.

The investigation has shown that the hose-fuselage connection bonding has been degraded over years of service.

This condition, if not corrected, could lead to the following consequences:

—The water contained in the wing tanks could run down into the fuselage and fuselage tail which could cause a displacement of the sailplane centre of gravity and consequently may lead to the loss of the sailplane controllability, or/and

—The loosened hose may jam the flight controls (push rods) and consequently may lead to the loss of the sailplane controllability.

For the reason stated above, the original issue of this AD required the inspection of the waterballast system hose-fuselage connections and the accomplishment of the relevant corrective actions (repair) as necessary.

This AD is revised to clarify the purpose of the insertion of the repetitive inspection in the Aircraft Maintenance Programme and to refer to a more appropriate scheduled maintenance review for the insertion of the repetitive inspection in the Aircraft Maintenance Programme.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

GROB Aircraft AG has issued Grob Aircraft Service Bulletin No. MSB–GROB–003, dated October 21, 2009. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the 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 this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This Proposed 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

We estimate that this proposed AD will affect 113 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this 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 $9,605, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $5, for a cost of $90 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 adding the following new AD:

GROB-WERKE GMBH & CO KG: Docket No. FAA–2010–0458; Directorate Identifier 2010–CE–023–AD.

Comments Due Date

(a) We must receive comments by June 17, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models G102 ASTIR CS and G102 STANDARD ASTIR III gliders, all serial numbers, that are:

(1) Certificated in any category; and

(2) Have water ballast equipment installed (the water ballast equipment could have been included as part of an option).

Subject

(d) Air Transport Association of America (ATA) Code 41: Water Ballast.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During an annual inspection, a water ballast hose connector was found disconnected from the fuselage wall of an Astir CS.

The investigation has shown that the hose-fuselage connection bonding has been degraded over years of service.

This condition, if not corrected, could lead to the following consequences:

—The water contained in the wing tanks could run down into the fuselage and

fuselage tail which could cause a displacement of the sailplane centre of gravity and consequently may lead to the loss of the sailplane controllability, or/and

—The loosened hose may jam the flight controls (push rods) and consequently may lead to the loss of the sailplane controllability.

For the reason stated above, the original issue of this AD required the inspection of the waterballast system hose-fuselage connections and the accomplishment of the relevant corrective actions (repair) as necessary.

This AD is revised to clarify the purpose of the insertion of the repetitive inspection in the Aircraft Maintenance Programme and to refer to a more appropriate scheduled maintenance review for the insertion of the repetitive inspection in the Aircraft Maintenance Programme.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within 30 days after the effective date of this AD and repetitively thereafter at intervals not to exceed 12 months, inspect the bonding between the water ballast system hose connectors and the fuselage wall connectors for correct and tight connection following paragraph 1.8 of Grob Aircraft Service Bulletin No. MSB–GROB–003, dated October 21, 2009.

(2) If, during any inspection required by paragraphs (f)(1) of this AD, any weak bonding is found, before further flight, repair the connection between the water ballast system hose connectors and the fuselage wall connectors following the instructions of paragraph 1.8 of Grob Aircraft Service Bulletin No. MSB–GROB–003, dated October 21, 2009.

(3) After the effective date of this AD, when installing a water ballast system on any affected sailplane, ensure that the water ballast system hose connectors and the fuselage wall connector are properly and tightly bonded.

(4) Within 30 days after the effective date of this AD, insert the following scheduled maintenance task into the FAA-approved aircraft maintenance program: "During each annual inspection and without exceeding a 12-month interval, inspect the bonding between the water ballast system hose connectors and the fuselage wall connectors for correct and tight connection. Repair any incorrect or loose connection."

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD No.: 2010–0053R1, dated April 14, 2010; and Grob Aircraft Service Bulletin No. MSB–GROB–003, dated October 21, 2009, for related information.

Issued in Kansas City, Missouri, on April 22, 2010.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–9954 Filed 4–30–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AC56

[Public Notice: 6982]

Exchange Visitor Program—Secondary School Students

AGENCY: Department of State.

ACTION: Proposed rule with request for comment.

SUMMARY: The Department of State is proposing to amend existing regulations to impose new program administration requirements within the secondary school student exchange program. These regulations govern Department designated exchange visitor programs under which foreign secondary school students (ages 15–18½) are afforded the opportunity to study in the United States at accredited public or private secondary schools for an academic semester or an academic year while living with American host families or residing at accredited U.S. boarding schools. Specifically, the Department is proposing to amend existing regulations regarding the screening, selection, school enrollment, orientation, and quality assurance monitoring on behalf of student participants; and the screening, selection, orientation, and quality assurance monitoring of host families and field staff. The purpose of this rule is to solicit public comment regarding these proposed changes that are offered to address the need for greater clarity in current existing regulatory language. The Department's objective is to better protect the health, safety, and welfare of these participants though enhanced clarity of existing regulations. Due to the academic calendar and the screening and selection cycle for the conduct of the Secondary School Student program, the comment period of this proposed rule has been set to 30 days from the date of publication. Concerns regarding the safety and welfare of secondary school student population necessitate a shorter comment period. To provide sponsors with sufficient time to prepare for implementation of changes in program administration to be effective in the academic year 2011/2012, the Department would like to accelerate this rulemaking.

DATES: The Department will accept comments from the public up to June 2, 2010.

ADDRESSES: You may submit comments, numbered by topic by any of the following methods:

- *Persons with access to the Internet may view this notice and provide comments by going to the regulations.gov Web site at: http://www.regulations.gov/index.cfm.*
- *Mail (paper, disk, or CD–ROM submissions):* U.S. Department of State, Office of Designation, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505.
- *E-mail: JExchanges@state.gov.* You must include the title (Exchange Visitor Program—Secondary School Students) and RIN (1400–AC56) in the subject line of your message.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522–0505; or e-mail at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

Comments

The Department has identified sixteen areas, as numbered in the Supplementary text of this document. In your response, comments should be numbered to coincide with the sixteen areas.

Background

The Department has authorized Secondary School Student programs since 1949, following passage of the United States Information and Educational Exchange Act of 1948 and adoption of 22 CFR part 68—Exchange Visitor Program, establishing a student exchange program (14 FR 4592, July 22, 1949). Over the last 60 years, more than 850,000 foreign exchange students have lived in and learned about America through these Secondary School Student programs.

In 1993, the United States Information Agency, the predecessor agency with oversight of the Exchange Visitor Program, substantially rewrote the regulations governing the Exchange Visitor Program, including the Secondary School Student category (*See* 58 FR 15196, Mar. 19, 1993, as amended at 59 FR 34761, July 7, 1994, redesignated at 64 FR 54539, Oct. 7, 1999.) Since that time, significant changes in the makeup of the American family and widespread access to new technologies have necessitated additional updates to these regulations. In 2006, the Department adopted new regulations set forth at 22 CFR 62.25 to require Secondary School Student program sponsors to complete criminal background checks on all officers, employees, agents, representatives and volunteers acting on their behalf who had direct contact with exchange students and to require program sponsors to contact host families and students monthly. The Department also required sponsors to ensure that all adult members of a host family household (age 18 or older) to undergo criminal background checks prior to placing an exchange student in the home. Sponsors must also report any allegation of sexual misconduct or any other allegations of abuse or neglect to both the Department and local law enforcement authorities as required in that jurisdiction (*see http://www.childwelfare.gov* for a list by State of child abuse and neglect statutes) (71 FR 16696, April 4, 2006).

The great majority of exchange students who come to the United States to attend high school enjoy a positive life-changing experience, grow in independence and maturity, improve their English language skills, and build relationships with U.S. citizens. As with other Exchange Visitor Program categories, the underlying purpose of the Secondary School Student Program is to further U.S. diplomatic and foreign policy goals by encouraging this positive academic and social interaction. Experience has shown that these students will share the knowledge and goodwill derived from their exchanges with their fellow citizens upon return to their home countries. Information on Department of State sponsored exchange programs can be found at *http://exchanges.state.gov/program evaluations/completed.html*.

While the vast majority of the Department's nearly 28,000 annual exchanges of secondary school students conclude with positive experiences for both the exchange student and the American host families, a number of incidents have occurred recently with respect to student placement and oversight which demand the Department's immediate attention. The success of the Secondary School Student program is dependent on the generosity of the American families who support this program by welcoming foreign students into their homes. The number of qualified foreign students desiring to come to the United States for a year of high school continues to rise and student demand is now placing pressure on the ability of sponsors to identify available and appropriate host family homes. The Department desires to provide the means to permit as many exchange students into the United States as possible so long as we can ensure their safety and welfare, which is our highest priority.

The Department also recognizes that local coordinators, who serve as representatives (employees or volunteers) of the Secondary School Student program sponsors and who have responsibility for obtaining school enrollment and locating and recruiting host families, are the critical link to a successful exchange program. Local coordinators exercise a degree of independent judgment when determining whether a potential host family is capable of providing a comfortable and nurturing home environment for a secondary school student, whether that family is an appropriate match for the student, and whether it has adequate financial resources to undertake hosting obligations. Accordingly, the Department proposes the adoption of an annual testing and certification program for all local and regional coordinators that will entail, inter alia, specifying more clearly the Department's regulatory requirements as well as requiring specific training for the local and regional coordinators engaged by the sponsor organizations.

This program is recognized as one of the Department's most valued exchange initiatives. The Department believes that enhanced specificity in the regulations and the establishment of minimum industry standards will improve the placement of students and promote the health, safety and well-being of this most vulnerable group of exchange visitors. The Department, the Congress, the American public, and members of the exchange community share the same goal of ensuring a safe and positive exchange experience for every foreign student invited to participate in this exchange program. To that end, the Department has engaged in a series of actions and outreach to focus the Secondary School Student exchange industry on best practices and continued improvement in selection and monitoring of host families and students.

Prior to the development of this proposed rule, the Department published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** to solicit comments from sponsors and the general public on current best practices in the industry. (*See* 74 FR 45385, Sept. 2, 2009). The ANPRM focused on six areas: (1) Utilization of standard information on a sponsor developed host family application form; (2) requirement for photographs of all host family homes (to include the student's bedroom, living areas, kitchen, outside of house and grounds) as a part of the host family application process; (3) the appropriateness of host family references from family members or local coordinators, and the feasibility of obtaining one reference from the school in which the student is enrolled; (4) whether fingerprint-based criminal background checks should be required of all adult host family members and sponsor officers, employees, representatives, agents and volunteers who come, or may come, into direct contact with the student and whether guidelines regarding the interpretation of criminal background checks are needed; (5) the establishment of baseline financial resources for potential host families; and (6) the establishment of limitations on the composition of potential host families.

In light of the 97 comments submitted in response to the ANPRM, the Department has identified sixteen areas that we believe will enhance the safety and welfare of foreign secondary school students studying in the United States. To effectively implement these changes, additional regulations are necessary. The following is an explanation of the proposed regulatory changes on which we invite comments:

1. Standard Host Family Application Form

The Department recognizes that many sponsors have invested significantly in technology to develop proprietary host family applications and application processing systems. The current sponsor-specific application formats vary but the Department has determined that they all collect information responsive to regulatory requirements. Accordingly, the Department believes that a Department-mandated and designed standard application form for all potential host families is not needed. However, to assist exchange sponsors in their current or future development or amendment of application forms, the Department has compiled a list of information fields, the collection of which it deems a best practice. This list is set forth at Appendix F—"Information to be collected on Secondary School Student Host Family Applications"—of this rulemaking.

2. Requiring Photographs of the Host Family Home

The Department finds that photographing potential host family homes is already a standard practice with more than half of existing secondary student exchange sponsors. Many of the sponsors who commented on the recent ANPRM indicated that they find providing photographs of the home to be a reasonable requirement and an industry "best practice" to prevent secondary school students from being placed in unhealthy environments. The Department concurs and proposes that all sponsors photograph the exterior, kitchen, student's bedroom, bathroom, and family or living room of the potential host family's home.

3. Personal Character References for Host Family Applicants

Under this proposal, host family members and sponsor representatives will not be permitted to serve as character references for potential host families. Further, the Department has determined that obtaining a character reference from local school officials is not feasible, raises certain privacy concerns, and should thus no longer be required.

4. Measuring Host Family Financial Resources

The Department has determined that regional differences in incomes and standards of living prevent adoption of a requirement that potential host families have a minimum household income. Such a requirement would not fairly or accurately reflect cost of living differences for families in urban, suburban, exurban and rural areas. Nor would such a requirement guarantee the adequacy of the care the student would receive. However, the Department does not deem appropriate the placement of Secondary School Student exchange participants with host families receiving financial needs-based government subsidies for food or housing which are necessary to meet basic living needs. Such families, by definition, lack sufficient financial resources to meet fully the financial obligations associated with hosting exchange students. It is recognized, however, that there could be a "needs-based subsidy for food or housing" whose beneficiaries could be capable of caring for an exchange student and the Department is therefore soliciting public comment on how best to define the phrase "needs-based" in this context.

To assist sponsors in their required assessment of a potential family's ability to undertake hosting obligations, the Department finds it appropriate for Secondary School Student program sponsors to obtain objective information on household income to help determine the financial capability of potential families to host an exchange student. The Department believes this objective measurement can be achieved through collecting certain information on the host family application form, already a current practice of many sponsors. Accordingly, the Department proposes that sponsors query potential host families regarding household income and include a box on the host family application form denoting annual household income level in broad ranges (less than $25,000; $25, 000–$35,000; $35,000–$45,000; $45,000–$55,000; $55,000–$65,000; $65,000–$75,000; and $75,000 and above). In evaluating host family resources, sponsors need to be mindful of the host family's obligation to provide three quality meals per day and ensure transportation for the exchange student to and from school and school activities.

5. Criminal Background Checks

The Department has conducted significant analysis of this proposed criminal background check requirement and recognizes that, to date, no single criminal background check, or combination of criminal background checks, has been identified as guaranteeing that a potential host family member has no record of any serious or other encounters with U.S. county, State or Federal criminal justice systems (hereinafter "criminal record"). The Department currently requires a private vendor name and social security number check of all potential host family adults and proposes to expand this requirement to include an FBI fingerprint-based criminal background check and a check of the National Sex Offender Registry for each potential host family adult. The Congress has recognized the importance of FBI fingerprint-based criminal background checks as part of a screening process for adults working with children on a professional or volunteer basis, and created the Child Safety Pilot Program. This Pilot Program provides youth-serving volunteer organizations access to the FBI master criminal history database for the purpose of vetting potential volunteers or employees. The Mentor organization, an NGO devoted to assisting youth-serving volunteer organizations and a participant in the Child Safety Pilot Program, has found the following since joining the pilot program:

> "Of the nearly 69,000 volunteers screened during the pilot, more than 6 percent had criminal records of concern, including serious crimes such as murder, rape and child sexual abuse. Furthermore, more than 41 percent of individuals with criminal records of concern had committed crimes in States other than where they were applying to volunteer—meaning only a nationwide check would have caught the criminal records." *http://www.mentoring.org/take_action/advocate_for_mentoring/background_checks/fact_sheet/*.

The Department notes that there must exist sufficient statutory authority for organizations to obtain FBI authorization to access the FBI master criminal history database. The Child Safety Pilot Program, which is administered by the National Center for Missing and Exploited Children (NCMEC) and codified at 42 U.S.C. 5119, extends the opportunity to access FBI-fingerprint-based criminal background checks to the Boys and Girls Clubs of America, the National Council of Youth Sports, the Mentor pilot program, as well as "any nonprofit organization that provides care, as that term is defined in section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c) for children." Care is defined at 42 U.S.C. 5119c as "the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities." Based on these statutory definitions, the Department and the National Center for Missing and Exploited Children (NCMEC) agree that the 90 Secondary School Student program sponsors designated by the Department to facilitate Secondary School Student exchange programs are eligible to apply

to NCMEC for participation in the Child Safety Pilot Program, or a subsequent successor program, or as otherwise authorized by law. Each sponsor would be required to apply to NCMEC, who will review the application for sufficiency and will, in turn, recommend to the FBI that the sponsor be included in the Child Safety Pilot Program. The FBI has final approval authority. Should the Child Safety Pilot Program not be extended or made permanent, this regulatory provision, if adopted, would necessarily become null and void.

We additionally note in this regard that there is pending legislation, the Child Protection Improvements Act of 2009 (S. 163, H.R. 1469), that would amend the National Child Protection Act of 1993 to establish a permanent mechanism that would allow youth-serving organizations access to FBI fingerprint-based criminal background checks through a process similar to the one outlined above.

The NCMEC's FBI fingerprint-based criminal background check process has been well and successfully administered since 2003. It is the Department's understanding that NCMEC will comply with both FBI criminal history record security policy and the Privacy Act regarding the storage, dissemination and destruction of criminal history record information. The Department will work with NCMEC to develop a standard guideline for interpreting any results received from either the FBI fingerprint-based criminal background check or the name and social security number criminal background check. NCMEC would interpret/adjudicate any identified criminal history records according to this standard guideline and would provide to sponsors a "green light/red light" (yes/no) determination for each host family adult. No potential host family would be allowed to host a secondary school exchange students if any host family member receives a "red light" result from NCMEC.

As a related matter, the Department provides notice of and seeks specific comment regarding ink and paper versus electronic collection of fingerprints. Currently, NCMEC processes ink and paper fingerprints. In such a process, an individual's fingerprints are inked and rolled onto a blank paper card, which if taken correctly, must be scanned into an electronic file before they are uploaded to the FBI for processing. We have been advised that some 30–40% of all ink and paper fingerprints taken are unclassifiable, meaning the fingerprints obtained are not of sufficient quality to be electronically scanned for processing. In such a situation, a new set of fingerprints would need to be taken and resubmitted, causing significant delay in processing time. Additionally, potential host family adults may be inconvenienced with travel to a local police station or a fingerprinting service provider to be ink and paper fingerprinted.

An alternative collection method is through electronic fingerprinting, which the Department has discussed with NCMEC. We believe that this process yields a number of important advantages over the ink and paper fingerprinting process. First, while 30–40% of ink and paper fingerprints are unclassifiable, electronic fingerprints are unclassifiable only 1–1.5% of the time and can almost always be corrected in real-time, permitting electronic fingerprints not taken correctly to be flagged as incomplete or inaccurate and immediately retaken. A number of private electronic fingerprinting organizations exist throughout the United States that dispatch trained organizational representatives to potential host family homes to electronically fingerprint adult family members. The Department seeks specific comment from the public regarding the value of this type of criminal background check and these two alternative collection methods.

The Department recognizes that to be effective in the educational exchange environment, criminal background checks must be timely, cost-effective and not overly inconvenient for the host family. The Department recognizes that a higher cost is involved for an ink and paper FBI fingerprint-based criminal background check ($17.25 to $30.25 for the FBI fingerprint-based criminal background check plus any State or local government processing fees, which on average would bring the total cost to $70 per individual) than the cost for the currently performed private vendor social security number and name check (*i.e.* approximately $4 for many non-profit organizations). The total cost for the electronic fingerprinting process is estimated at approximately $300–$400 per host family for the private fingerprinting organization's representative to visit the host family, collect electronic fingerprints of all host family adults, transmit fingerprints to NCMEC for subsequent channeling of the fingerprints to the FBI, adjudicate any criminal record, and provide to sponsors a "green light/red light" (yes/no) determination as to the host family's ability to host an exchange visitor.

The Department is of the opinion that the safety of secondary school students invited to participate in this program outweighs the additional cost that may be incurred. Sponsors would be responsible for absorbing the cost of either the ink and paper or electronic collection process. We anticipate that this cost will be passed along to the exchange student as an additional program cost or will be absorbed by the sponsor. We specifically solicit and welcome comments regarding cost, both financial and in terms of staff resources, for the ink and paper and electronic FBI fingerprint-based criminal background checks.

Finally, the Department recognizes that a search of State criminal history record databases would provide an additional level of review and certainty of results. However, there is no uniform criminal history record database standard across the various State jurisdictions, no uniform practice in how States permit access to such repositories, and States vary substantially in how well they maintain and how frequently they update their criminal history repositories. Specifically, the June 2006 "Attorney General's Report on Criminal History Background Checks" explains that some States make their records available for non-criminal justice purposes "more broadly than others," though other States are "limiting their use for non-criminal justice purposes to those specifically authorized by State law." For many States, a separate statutory authority must be obtained for specific non-criminal justice criminal record searches. Given these parameters, the Department seeks specific comments regarding the feasibility and utility of also requiring State criminal history record checks.

6. Host Family Composition

The Department does not define what constitutes a family; however, we take administrative notice that a family is considered to be more than one person. To ensure the Secondary School Student program's integrity and original intent, the Department proposes that a potential single adult host parent must have:

- At least one school-aged child living full-time in the host family home; or
- A child that no longer resides in the host family home due to custody agreements but who returns to the family home for frequent visits; or
- A child pursuing higher-education studies but who returns to the family home for frequent visits.

No single adults will be allowed to host Secondary School Students. Only families comprised of one adult meeting the above standard or families

comprised of at least two adults will be permitted to host Secondary School Students.

7. Local Coordinator Training Course

The Department recognizes that the exercise of good judgment by sponsors' local coordinators is the critical factor in ensuring a successful exchange program. Accordingly, in addition to the individual, organization-specific training conducted by the sponsor's; the Department proposes to adopt a testing and certification program for all local and regional coordinators to be administered by and paid for by the Department of State. This training will include instruction designed to provide a comprehensive understanding of the Exchange Visitor Program, its public diplomacy objectives, and the Secondary School Student category rules and regulations. The training conducted by the Department will also include instruction on conflict resolution; how to handle and report emergency situations; sexual conduct codes and appropriate responses; the criteria to be used in screening potential host families; and the exercise of good judgment in determining the suitability of a host family placement. Organizational-specific training may be rendered in a classroom setting, one-on-one, or via an online platform. If training is conducted online, the sponsor must demonstrate successful completion of the course by the local coordinator via an online test. The Department will review all training materials and will require that these materials be provided with the sponsor application for designation or redesignation. The Department additionally proposes that local coordinators be required to undergo annual certification each year following completion of the original training.

8. Number of Students and Host Families for Which a Local Coordinator May Be Responsible.

The Department, which has over 20 years' experience with limiting the responsibilities of local coordinators overseeing au pairs and their host families is considering limiting the number of student and host family placements that a local coordinator may oversee in the Secondary School Student category of exchange. The Department is seeking comments on whether it should establish a similar limit for the Secondary School Student program, and if so, what such limits should be for part-time versus a local coordinator working full-time.

Further, the Department proposes seven additional changes and/or clarifications to existing regulations that will provide greater specificity, and oversight improvements to better reflect what the Department deems to be current "best practices". These proposed changes include:

9. Athletic Participation in the United States

Consistent with the purpose of participation in the Secondary School Student program, athletic eligibility or participation in an athletic program is not guaranteed. Approval for a foreign exchange student to participate in an athletic program must be authorized by the local school district in which the student is enrolled; and by the State authority responsible for determination of athletic eligibility, if applicable. The regulations are being clarified to reflect that an exchange student may not be selected and placed based on athletic ability.

10. Prohibition of Payments to Host Families

Historically, the Secondary School Student program has been carried out through the use of voluntary host families. However, in May 2008 the Department learned that some sponsors were compensating American families to host secondary school students. Existing regulations governing this category of exchange do not specifically address payment of host families. In response to concerns raised, the Department canvassed the Secondary School Student exchange community requesting their comment on this practice. At that time, there were 102 organizations designated by the Department to conduct Secondary School Student exchange programs. Fifty organizations provided comment. Of these, 4 indicated that they were currently paying host families and 6 believed that host families should be paid. The remaining 40 sponsors opposed the payment of host families, citing that paying host families would not serve the program well and that the long-term success of the current model is based on the relationship between the participant and the host family, the success of which is the result of an act of generosity and citizenship. The Department agreed and on July 22, 2008, published a Policy Notice that host families should not be paid for hosting exchange students. The Department is proposing that the prohibition of payment to host families be added to the regulations to ensure that the integrity of the program is maintained.

11. Clarification that the host family orientation is to be conducted after the host family application process has been completed and the host family has been fully vetted and accepted into the program.

12. A requirement that a visit to the host family home of the secondary school student be conducted, within two months of placement, by an organizational representative of the sponsor other than the local coordinator who screened and selected the host family and made the placement.

13. A requirement that no secondary school student placement be made beyond one hour's drive of the home of a local organizational representative, a change in an existing requirement that sets 120 miles as the maximum.

14. A clearer distinction between training and supervision requirements of officers, employees, representatives, agents, and volunteers acting on behalf of the sponsor.

15. A prohibition against removing secondary school students' government issued documents, personal computers and telephones from their possession; and

16. Adoption of standards ensuring that sponsors' promotional materials are professional, ethical, and accurately reflect the sponsor's purposes, activities, and sponsorship. Promotional materials should not compromise the privacy, safety or security of participants, families or schools. Specifically, sponsors must not include personal student data or contact information (including addresses, phone numbers or e-mail addresses) or photographs of the student on Web sites or other promotional materials. Sponsors would also ensure that access to student profiles is password protected and would only be available to potential host families who have been fully vetted and selected for program participation.

Administrative Procedure Act

The Department of State is of the opinion that the Exchange Visitor Program is a foreign affairs function of the U.S. Government and that rules implementing this function are exempt from section 553 (Rulemaking) and section 554 (Adjudications) of the Administrative Procedure Act (APA). The U.S. Government policy and longstanding practice, has supervised and overseen foreign nationals who come to the United States as participants in exchange visitor programs, either directly or through private sector program sponsors or grantees. When problems occur, the U.S. Government is often held accountable by foreign governments for the treatment of their nationals, regardless of who is responsible for the problems. The purpose of this rule is to protect the

health and welfare of foreign nationals entering the United States (often on programs funded by the U.S. Government) for a finite period of time and with a view that they will return to their countries of nationality upon completion of their programs. The Department of State represents that failure to protect the health and welfare of these foreign nationals will have direct and substantial adverse effects on the foreign affairs of the United States. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule as a proposed rule, with a 30-day provision for public comment and without prejudice to its determination that the Exchange Visitor Program is a foreign affairs function.

Regulatory Flexibility Act/Executive Order 13272: Small Business

As discussed above, the Department believes that this proposed rule is exempt from the provisions of 5 U.S.C 553, and that no other law requires the Department to give notice of proposed rulemaking. Accordingly the Department believes that this proposed rule is not subject to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) or Executive Order 13272, section 3(b). However, the Department has examined the costs and benefits associated with this proposed rule, and declare that educational and cultural exchanges are both the cornerstone of U.S. public diplomacy and an integral component of American foreign policy. The Secondary School Student exchange programs conducted under the authorities of the Exchange Visitor Program promote mutual understanding by providing foreign students the opportunity to study in American high schools while living with American host families. Not only are the students themselves transformed by these experiences, but so too are their families, friends and teachers in their home countries. By studying and participating in daily student life in the United States, Secondary School Student program participants gain an understanding of and an appreciation for the similarities and difference between their culture and that of the United States. Upon their return home, these students enrich their schools and communities with different perspectives of U.S. culture and events, providing local communities with new and diverse perspectives. Secondary School Student exchanges also foster enduring relationships and lifelong friendships which help build longstanding ties between the people of the United States and other countries. In reciprocal fashion, American secondary school students are provided opportunities to increase their knowledge and understanding of the world through these friendships. Participating schools gain from the experience of having international students in the classroom, at after-school activities, and in their communities. Though the benefits of these exchanges to the United States and its people cannot be monetized, the Department is nonetheless of the opinion that these benefits outweigh the costs associated with this proposed rule.

Further, the Department has examined the potential impact of this proposed rule on small entities. Entities conducting student exchange programs are classified under code number 6117.10 of the North American Industry Classification System. Some 5,573 for-profit and tax-exempt entities are listed as falling within this classification. Of this total number of so-classified entities, 1,226 are designated by the Department of State as sponsors of an exchange visitor program, designated as such to further the public diplomacy mission of the Department and U.S. Government through the conduct of people to people exchange visitor programs. Of these 1,226 Department designated entities, 933 are academic institutions and 293 are for-profit or tax-exempt entities. Of the 293 for-profit or tax-exempt entities designated by the Department, 131 have annual revenues of less than $7 million thereby falling within the purview of the Regulatory Flexibility Act. Thus, the Department finds that 2.3% of all organizations conducting student exchange programs are both designated by the Department as Exchange Visitor Program sponsors and also have annual revenues of less than $7 million. Although, as stated above, the Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and, as such, that this proposed rule is exempt from the rulemaking provisions of section 553 of the APA, given the projected costs of this proposed rule discussed below and the number of entities conducting student exchange programs noted above, the Department has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by State, local and Tribal governments, in the aggregate, or by the private sector, of $100 million in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have Tribal implications, will not impose substantial direct compliance costs on Indian Tribal governments, and will not pre-empt Tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. The Department is of the opinion that the Exchange Visitor Program is a foreign affairs function of the United States Government and that rules governing the conduct of this function are exempt from the requirements of Executive Order 12866. However, the Department has nevertheless reviewed this proposed regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

The Department has identified potential costs associated with this proposed rule beginning with the proposed requirement that sponsors collect photographs documenting the exterior and interior of a potential host family home. Although many sponsors currently collect such photographs as part of the host family application and vetting process, not all designated sponsors do so. Those sponsors that do collect this photographic documentation find that the cost of doing so is not

substantial as the photographs are taken by the local coordinator with digital cameras, uploaded electronically, and attached to the host family application that is in turn sent to the sponsor for evaluation and further vetting. For program sponsors not currently following this practice, the cost of doing so will be associated with the purchase of a digital camera for those local coordinators that do not own or have access to one. The Department does not believe this will be a substantial cost to sponsors.

The Department is necessarily of the opinion that all reasonable measures should be taken to ensure the placement of students in safe homes. Having adopted in 2006 a criminal background check required of all adults resident in a potential host family home, the Department now proposes to strengthen this requirement by expanding the criminal background check to include an FBI fingerprint-based criminal background check, a basic Social Security number and name check and a national Sex Offender registry check for all adult members resident in a potential host family home. The nationwide average for an ink and paper FBI fingerprint-based criminal background check is $70.00 per person. Approximately 60,000 checks will need to be performed at an aggregate cost of approximately $4.2 million. A possible second approach to the collection of these criminal background checks would involve-I home electronic fingerprinting of all adult members of a host family household. This process would involve the use of a contractor, with a national footprint, recognized and authorized by the FBI to collect and process electronic fingerprints. Estimated costs for this process would be $300–$400 per household with an aggregate cost of $8.4 million. The Department anticipates that these costs will be borne by the exchange student as an additional program cost or will be absorbed by the sponsor.

The Department also identifies the costs associated with the implementation of enhanced training for local coordinators, the individuals acting as agents of program sponsors in screening, selecting and monitoring host family placements. The Department will develop a training program for all local coordinators at a projected cost to the Department of $100,000. An additional cost of this proposed rule is the time required for these individuals to take this training. While some local coordinators receive payment for placing exchange students, others do not. In determining costs for required training, the Department places a value of $20 per hour on the time spent in taking this required training and thus finds that if all volunteers and agents (estimated at 4,000 individuals) spend three hours each taking the proposed training, then the aggregate cost would be approximately $240,000. Finally, the Department notes that there will be an increased cost arising from the proposed requirement that each host family home be visited within the first or second month of the student's placement in the home by a representative of the sponsor other than the local coordinator who screened and selected the host family and arranged the placement. The Department recognizes that the sponsor will utilize its existing local coordinator network and that the identifiable cost of this proposal will be related to the additional cost of travel for this sponsor representative, which the Department anticipates to not be substantial.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

The information collection requirements contained in this proposed rulemaking are pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and OMB Control Number 1405–0147, Form DS–7000.

List of Subjects in 22 CFR Part 62

Cultural Exchange Program.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The Authority citation for Part 62 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451 *et seq.*; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, Div. G, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168; the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. 104–208, Div. C, 110 Stat. 3009–546, as amended; Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (U.S.A. PATRIOT ACT), Pub. L. 107–56, Sec. 416, 115 Stat. 354; and the Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. 107–173, 116 Stat. 543.

2. Section 62.25 is revised to read as follows:

§ 62.25 Secondary school students.

(a) *Purpose.* This section governs Department of State designated exchange visitor programs under which foreign secondary school students are afforded the opportunity to study in the United States at accredited public or private secondary schools for an academic semester or an academic year, while living with American host families or residing at accredited U.S. boarding schools. The secondary school student program is one of the Department's oldest and most effective means to foster enduring relationships between the people of the United States and other countries and is, accordingly, an integral component of U.S. public diplomacy and American foreign policy. By living with American host families and participating in daily student life in the United States, exchange students gain an understanding of and appreciation for the similarities and differences between their culture and that of the United States. The great majority of exchange students who come to the United States to attend high school enjoy a positive life-changing experience, grow in independence and maturity, improve their English language skills, and build relationships with U.S. citizens. The success of this program is dependent on the generosity of the American families who support this program by welcoming exchange students into their homes.

(b) *Program sponsor eligibility.* Eligibility for designation as a secondary school student exchange visitor program sponsor is limited to organizations:

(1) With tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) Which are United States citizens as such term is defined in § 62.2 of this part.

(c) *Program eligibility.* Secondary school student exchange visitor

programs designated by the Department of State must:

(1) Require all exchange students to be enrolled and participating in a full course of study at an accredited educational institution;

(2) Allow entry of exchange students for not less than one academic semester (or quarter equivalency) and not more than two academic semesters (or quarter equivalency) duration; and

(3) Ensure that the program is conducted on a U.S. academic calendar year basis, except for students from countries whose academic year is opposite that of the United States. Exchange students may begin an exchange program in the second semester of a U.S. academic year only if specifically permitted to do so, in writing, by the school in which the exchange student is enrolled. In all cases, sponsors must notify both the host family and school prior to the exchange student's arrival in the United States that the placement is for either an academic semester, academic year, or for a calendar year.

(d) *Program administration.* Sponsors must ensure that all organizational officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained. All training must be applicable to the individual's position within the sponsor organization. A Department-administered training program will include instruction designed to provide a comprehensive understanding of the Exchange Visitor Program; its public diplomacy objectives; and the Secondary School Student category rules and regulations. The training component developed by sponsors for local coordinators must specifically include, at a minimum, instruction in conflict resolution; procedures for handling and reporting emergency situations; awareness or knowledge of child safety standards; information on sexual conduct codes; procedures for handling and reporting allegations of sexual misconduct or any other allegations of abuse or neglect; the criteria to be used to screen potential host families and exercising good judgment when identifying what constitutes suitable host family placements. Training may be rendered in classroom, one-on-one, or via an online platform. Sponsors must demonstrate the individual's successful completion of the training. All sponsor training materials must be submitted to the Department for review as part of the sponsor's application for designation or redesignation. Annual refresher training is required.

(2) Are adequately supervised. Sponsors must create and implement organization-specific standard operating procedures for the supervision of local coordinators designed to prevent or deter fraud, abuse, or misconduct in the performance of the duties of these employees/agents/volunteers. They must also have sufficient internal controls to ensure that such employees/agents/volunteers comply with such standard operating procedures.

(3) Have been vetted annually through an FBI fingerprint-based criminal background check, a basic name and Social Security number check, and a check of the National Sex Offender Registry and has accordingly received a "green light" response from the Child Safety Pilot Program as administered by the National Center of Missing and Exploited Children (NCMEC), or its subsequent successor program, or as otherwise authorized by law;

(4) Place no exchange student with his or her relatives;

(5) Make no exchange student placement beyond one hour's drive of the home of the local coordinator authorized to act on the sponsor's behalf in both routine and emergency matters arising from that exchange student's participation in the exchange visitor program;

(6) Make no monetary payments to host families;

(7) Provide exchange students with reasonable access to their natural parents and family by telephone and e-mail;

(8) Make certain that the exchange students' governmental issued documents (*i.e.* passports, Forms DS–2019), personal computers, and telephones are not removed from their possession;

(9) Conduct the host family orientation after the host family has been fully screened and selected;

(10) That no organizational representative acts as:

(i) Both a host family and a local coordinator or area supervisor for any exchange student participant;

(ii) A host family for one sponsor and a local coordinator for another sponsor; or

(iii) A local coordinator for any student over whom they have a position of trust or authority (*i.e.* a principal or teacher at a school where the student attends).

(11) Maintain, at minimum, a monthly schedule of personal contact with the exchange student. The first monthly contact by the local coordinator to the exchange student must be in person. All other contacts may take place in person, on the phone, or via electronic mail and must be properly documented. The sponsor is responsible for ensuring that issues raised through such contacts be promptly and appropriately addressed.

(12) That a sponsor representative other than the local coordinator who recruited, screened and selected the host family visit the exchange student/host family home within the first or second month following the student's placement in the home.

(13) Maintain, at a minimum, a monthly schedule of personal contact with the host family. At least once during the fall semester and at least once during the spring semester, (*i.e.* twice during the academic year) the contact by the local coordinator with the host family must be in person. All other contacts may take place in person, on the phone, or via electronic mail and must be properly documented. The sponsor is responsible for ensuring the issues raised through such contacts be promptly and appropriately addressed.

(14) That host schools are provided contact information for the local organizational representative (including name, direct phone number, and e-mail address) for the local organizational representative, the program sponsor, and the Department's Office of Designation; and

(15) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program administration that the Department may impose.

(e) *Student selection.* In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that all participants in a designated secondary school student exchange visitor program:

(1) Are secondary school students in their home countries who have not completed more than 11 years of primary and secondary study, exclusive of kindergarten; or are at least 15 years of age but not more than 18 years and six months of age as of the program start date;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F–1 or J–1 visa status.

(f) *Student enrollment.* (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student in a United States public or private secondary school. Such prior acceptance must:

(i) Be secured from the school principal or other authorized school administrator of the school or school

system that the exchange student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Under no circumstance may a sponsor facilitate the entry into the United States of an exchange student for whom a written school placement has not been secured.

(3) Under no circumstance may a sponsor charge a student private school tuition if such arrangements are not finalized in writing prior to the issuance of Form DS–2019.

(4) Sponsors must maintain copies of all written acceptances for a minimum of three years and make such documents available for Department of State inspection upon request.

(5) Sponsors must provide the school with a translated "written English language summary" of the exchange student's complete academic course work prior to commencement of school, in addition to any additional documents the school may require. Sponsors must inform the prospective host school of any student who has completed secondary school in his/her home country.

(6) Sponsors may not facilitate the enrollment of more than five exchange students in one school unless the school itself has requested, in writing, the placement of more than five students from the sponsor.

(7) Upon issuance of a Form DS–2019 to a prospective participant, the sponsor accepts full responsibility for securing a school and host family placement for the student, except in cases of voluntary student withdrawal or visa denial.

(g) *Student orientation.* In addition to the orientation requirements set forth at § 62.10, all sponsors must provide exchange students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program along with a detailed summary of travel arrangements;

(2) A copy of the Department's Welcome letter to exchange students;

(3) Age and language appropriate information on how to identify and report sexual abuse or exploitation;

(4) A detailed profile of the host family with whom the exchange student will be placed. The profile must state whether the host family is either a permanent placement or a temporary-arrival family;

(5) A detailed profile of the school and community in which the exchange student will be placed. The profile must state whether the student will pay tuition; and

(6) An identification card, which lists the exchange student's name, United States host family placement address and telephone numbers (landline and cellular), sponsor name and main office and emergency telephone numbers, name and telephone numbers (landline and cellular) of the local coordinator and area representative, the telephone number of Department's Office of Designation, and the Secondary School Student program toll free emergency telephone number. The identification card must also contain the name of the health insurance provider and policy number. Such cards may be provided in advance of home country departure or immediately upon entry into the United States but must be corrected, reprinted and reissued to the student if changes in contact information occur due to a change in the student's placement.

(h) Student extra-curricular activities. Exchange students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) Authorized by the local school district in which the student is enrolled; and

(2) Authorized by the State authority responsible for determination of athletic eligibility, if applicable. Sponsors shall not knowingly be party to a placement (inclusive of direct placements) based on athletic abilities, whether initiated by a student, a natural or host family, a school, or any other interested party. Any placement in which either the student or the sending organization in the foreign country is party to an arrangement with any other party, including receiving school personnel, whereby the student will attend a particular school or live with a particular host family must be reported to the particular school and the National Federation of State High School Associations prior to the first day of classes.

(i) *Student employment.* Exchange students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) *Host family application and selection.* Sponsors must adequately screen and select all potential host families and at a minimum must:

(1) Provide potential host families with a detailed summary of the Exchange Visitor Program and of their requirements, obligations and commitment to host;

(2) Utilize a standard application form developed by the sponsor. Such application form must be signed and dated at the time of application by all adults living in the home of a potential host family. The host family application must be designed to provide a detailed summary and profile of the host family, the physical home environment (to include photographs of the host family home's exterior and grounds, kitchen, student's bedroom, bathroom, and family and living areas), family composition, and community environment. Exchange students are not permitted to reside with their relatives.

(3) Conduct an in-person interview with all family members residing in the home where the student will be living;

(4) Ensure that the host family is capable of providing a comfortable and nurturing home environment and that the home is clean and sanitary; that the exchange student's bedroom contains a separate bed for the student that is neither convertible nor inflatable in nature; and that the student has adequate storage space for clothes and personal belongings, reasonable access to bathroom facilities, study space if not otherwise available in the house and reasonable, unimpeded access to the outside of the house in the event of a fire or similar emergency. An exchange student may share a bedroom, but with no more than one other individual of the same sex.

(5) Ensure that the host family has a good reputation and character by securing two personal references from within the community from individuals who are not relatives of the potential host families or representatives of the sponsor (*i.e.,* field staff or volunteers), attesting to the host family's good reputation and character;

(6) Ensure that the host family has adequate financial resources to undertake hosting obligations and is not receiving needs-based government subsidies for food or housing.

(7) Verify that each member of the host family household 18 years of age and older, as well as any new adult member added to the household, or any member of the host family household who will turn eighteen years of age during the exchange student's stay in that household, has undergone an FBI fingerprint-based criminal history record information background check, a basic name and social security number check, and a check of the National Sex Offender Registry, and has accordingly received a "green light" response from the Child Safety Pilot Program as administered by the National Center of Missing and Exploited Children (NCMEC), or its subsequent successor program, or as otherwise authorized by law;

(8) Maintain a record of all documentation on a student's exchange program, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years following program completion; and

(9) Ensure that a potential single adult host parent has at least one school-aged child living full-time in the host family home, a child that no longer resides in the host family home due to custody agreements but who returns to the family home for frequent visits, or a child pursuing higher-education studies but who returns to the family home for frequent visits.

(k) *Host family orientation.* In addition to the orientation requirements set forth in § 62.10, sponsors must:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange visitor program, including examples of "best practices" developed by the exchange community;

(2) Provide all selected host families with a copy of the Department's letter of appreciation to host families;

(3) Provide all selected host families with a copy of Department of State-promulgated Exchange Visitor Program regulations and a copy of the Department of State letter to exchange student host families;

(4) Advise all selected host families of strategies for cross-cultural interaction and conduct workshops to familiarize host families with cultural differences and practices; and

(5) Advise host families of their responsibility to inform the sponsor of any and all material changes in the status of the host family or student, including, but not limited to, changes in address, finances, employment and criminal arrests.

(l) *Host family placement.* (1) Sponsors must secure, prior to the student's departure from his or her home country, a permanent or arrival host family placement for each exchange student participant. Sponsors may not:

(i) Facilitate the entry into the United States of an exchange student for whom a host family placement has not been secured;

(ii) Place more than one exchange student with a host family without the express prior written consent of the host family, the natural parents, and the students being placed. Under no circumstance may more than two exchange students be placed with one host family, or with one local coordinator, regional coordinator, or volunteer.

(2) Prior to the student's departure from his/her home country, sponsors must advise both the exchange student and host family, in writing, of the respective family compositions and backgrounds of each, whether the host family placement is a permanent or arrival placement, and facilitate and encourage the exchange of correspondence between the two.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor must document the reason(s) necessitating such change and provide the Department of State with an annual statistical summary reflecting the number and reason(s) for such change in host family placement in the program's annual report.

(m) *Advertising and Marketing for the recruitment of host families.*—In addition to the requirements set forth in 62.9(d) in advertising and promoting for host family recruiting, sponsors must:

(1) Utilize only promotional materials that professionally, ethically, and accurately reflect the sponsors purposes, activities, and sponsorship;

(2) Not publicize the need for host families via any public media with announcements, notices, advertisements, *etc.* that are not sufficiently in advance of the exchange student's arrival, appeal to public pity or guilt, imply in any way that an exchange student will be denied participation if a host family is not found immediately, or identify photos of individual exchange students and include an appeal for an immediate family;

(3) Not promote or recruit for their programs in any way that compromises the privacy, safety or security of participants, families, or schools. Specifically, sponsors shall not include personal student data or contact information (including addresses, phone numbers or e-mail addresses) or photographs of the student on Web sites or other promotional materials; and

(4) Ensure that access to exchange student photographs and personally identifying information on line or in print form are password protected and only made available to potential host families who have been fully vetted and selected.

(n) *Reporting requirements.* Along with the annual report required by regulations set forth at § 62.15, sponsors must file with the Department of State the following information:

(1) Sponsors must immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or any other allegations of abuse or neglect of an exchange student. Sponsors must also report such allegations as required by local or State statute or regulation. Failure to report such incidents to the Department and, as required by State law or regulation, to local law enforcement authorities shall be grounds for the suspension and revocation of the sponsor's Exchange Visitor Program designation.

(2) A report of all final academic year and semester program participant placements by August 31 for the upcoming academic year or January 15 for the Spring semester and calendar year. The report must be in the format directed by the Department and must include at a minimum, the exchange student's full name, Form DS–2019 number (SEVIS ID #), host family placement (current U.S. address), school (site of activity) address, the local coordinator's name and zip code, and other information the Department may request.

(3) A report of all situations which resulted in the placement of an exchange student with more than one host family or in more than one school. The report must be in a format directed by the Department and include, at a minimum, the exchange student's full name, Form DS–2019 number (SEVIS ID #), host family placements (Current U.S. address), schools (site of activity addresses), the reason for the change in placement, and the date of the move.

3. A new Appendix F is added to Part 62 to read as follows:

Appendix F to Part 62—Suggested Information To Be Collected on Secondary School Student Host Family Applications

Basic Family Information

a. Host Family Member—Full name and relationship (children and adults) either living full-time or part-time in the home or who frequently stay at the home).

b. Date of Birth (DOB) of all family members.

c. Street Address.

d. Contact information (telephone; e-mail address) of host parents.

e. Employment—employer name, job title, and point of contact for each working resident of the home.

f. Is the residence the site of a functioning business? (*e.g.,* daycare, farm)

g. Description of each household member (*e.g.,* level of education, profession, interests, community involvement, and relevant behavioral or other characteristics of such household members that could affect the successful integration of the exchange visitor into the household).

h. Has any member of your household been charged with any crime?

Household Pets

a. Type of Pets.

b. Number of Pets.

Financial Resources

a. Average Annual Income Range: Less than $25,000; $25,000–$35,000; $35,000–$45,000; $45,000–$55,000; $55,000–$65,000; $65,000–$75,000; and $75,000 and above.

b. Describe if anyone residing in the home receives any kind of public assistance (financial needs-based government subsidies for food or housing).

c. Identify those personal expenses expected to be covered by the student.

Diet

a. Does anyone in the family follow any dietary restrictions? (Y/N)

If yes, describe:

b. Do you expect the student to follow any dietary restrictions? (Y/N)

If yes, describe:

c. Would you feel comfortable hosting a student who follows a particular dietary restriction (ex. Vegetarian, Vegan, *etc.*)? (Y/N)

d. Would the family provide three (3) square meals daily?

High School Information

a. Name and address of school (private or public school).

b. Name, address, e-mail and telephone number of school official.

c. Approximate size of the school student body.

d. Approximate distance between the school and your home.

e. Approximate start date of the school year.

f. How will the exchange student get to the school (*e.g.* bus, carpool, walk)?

g. Would the family provide special transportation for extracurricular activities after school or in the evenings, if required?

h. Which, if any, of your family's children, presently attend the school in which the exchange visitor is enrolled?

If applicable list sports/clubs/activities, if any, your child(ren) participate(s) in at the school.

i. Does any member of your household work for the high school in a coaching/teaching/or administrative capacity?

j. Has any member of your household had contact with a coach regarding the hosting of an exchange student with particular athletic ability?

If yes, please describe the contact and sport.

Community Information

a. In what type of community do you live (*e.g.:* Urban, Suburban, Rural, Farm).

b. Population of community.

c. Nearest Major City (Distance and population).

d. Nearest Airport (Distance).

e. City or town Web site.

f. Briefly describe your neighborhood and community.

g. What points of interest are near your area (parks, museums, historical sites)?

h. Areas in or near neighborhood to be avoided?

Home Description

a. Describe your type of home (*e.g.,* single family home, condominium, duplex, apartment, mobile home) and include photographs of the host family home's exterior and grounds, kitchen, student's bedroom, student's bathroom, and family and living areas.

b. Describe Primary Rooms and Bedrooms.

c. Number of Bathrooms.

d. Will the exchange student share a bedroom? (Y/N)

If yes, with which household resident?

e. Describe the student's bedroom.

f. Describe amenities that student has access to.

g. Utilities.

Family Activities

a. Language spoken in home.

b. Please describe activities and/or sports each family members participate in:

(*e.g.,* camping, hiking, dance, crafts, debate, drama, art, music, reading, soccer, baseball, horseback riding).

c. Describe your expectations regarding the responsibilities and behavior of the student while in your home (*e.g.,* homework, household chores, curfew (school night and weekend), access to refrigerator and food, drinking of alcoholic beverages, driving, smoking, computer/Internet/E-Mail).

d. Would you be willing voluntarily to inform the exchange visitor in advance of any religious affiliations of household members? (Y/N)

e. Would any member of the household have difficulty hosting a student whose religious beliefs were different from their own? (Y/N) *Note:* A host family may want the exchange visitor to attend one or more religious services or programs with the family. The exchange visitor cannot be required to do so, but may decide to experience this facet of U.S. culture at his or her discretion.

f. How did you learn about being a host family?

Dated: April 26, 2010.

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–10168 Filed 4–30–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0020]

RIN 1625–AA00

Safety Zone; AVI September Fireworks Display, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a safety zone on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before June 2, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0020 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 proposed rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7262, e-mail *Corey.R.McDonald@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:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0020),

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 (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0020" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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–2010–0020" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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).

Public Meeting

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

Background and Purpose

The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Lower Colorado River in support of a fireworks show in the navigation channel of the Lower Colorado River, Laughlin, NV. The fireworks show is being sponsored by AVI Resort and Casino. The safety zone would be set at an 800 foot radius around the firing site. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

Discussion of Proposed Rule

The Coast Guard proposes a safety zone that would be enforced from 8 p.m. to 9:45 p.m. on September 5, 2010. The limits of the safety zone would include all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″ N, 114°38′28″ W.

This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the event and to protect other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

U.S. Coast Guard personnel would enforce this safety zone. Other Federal, State, or local agencies may assist the Coast Guard, including the Coast Guard Auxiliary. Vessels or persons violating this rule would be subject to both criminal and civil penalties.

Regulatory Analyses

We developed this proposed 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 proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although the safety zone would restrict boating traffic within the navigable waters of the Lower Colorado River, Laughlin, NV, the effect of this regulation would not be significant as the safety zone would encompass only a portion of the waterway and would be very short in duration. Traffic could pass around the safety zone or through it with permission from the Captain of the Port. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the region of the lower Colorado River adjacent to AVI Resort and Casino from 8 p.m. to 9:45 p.m. on September 5, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone only encompasses a portion of the waterway; it is short in duration at a

relatively late hour when commercial traffic is low; and the Captain of the Port may authorize entry into the zone, if necessary. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VFH before the safety zone is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, at 619–278–7262. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T11–299 to read as follows:

§ 165.T11–299; Safety Zone; AVI September Fireworks Display; Laughlin, Nevada, NV.

(a) *Location.* The limits of the safety zone are as follows: all navigable waters within 800 feet of the firing location adjacent to the AVI Resort and Casino centered in the channel between Laughlin Bridge and the northwest point of AVI Resort and Casino Cove in position: 35°00′93″ N, 114°38′28″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 9:45 p.m. on September 5, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: April 19, 2010.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2010–10204 Filed 4–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0250]

RIN 1625–AA00

Safety Zone; Chicago Tall Ships Fireworks, Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on Lake Michigan within Chicago Harbor near Navy Pier in Chicago, Illinois. This zone is intended to restrict vessels from a portion of Chicago Harbor due to a fireworks display. This proposed safety zone is necessary to protect the surrounding public and their vessels from the hazards associated with a fireworks display.

DATES: Comments and related material must be received by the Coast Guard on or before June 2, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0250 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 proposed rule, call or e-mail CWO2 Jon Grob, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7188, e-mail *Jon.K.Grob@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:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0250), 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 (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0250" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½; by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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–2010–0250" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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).

Public Meeting

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

Basis and Purpose

This temporary safety zone is necessary to ensure the safety of vessels from the hazards associated with the Tall Ships Fireworks. The Captain of the Port, Sector Lake Michigan, has determined that the Tall Ships Fireworks presents significant risks to public safety and property. The likely combination of congested waterways and a fireworks display could easily result in serious injuries or fatalities.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone on specified waters of Lake Michigan in the vicinity of Chicago Harbor. This safety zone will encompass all navigable waters located off the north east end of Navy Pier, encompassing an area 600 yards by 750 yards bound by a line drawn from 41°53′24″ N, 087°35′55″ W; then north to 41°53′41″ N, 087°35′55″ W; then east to 41°53′41″ N, 087°35′26″ W; then south to 41°53′24″ N, 087°35′26″ W; then west returning to the point of origin (NAD 83). The proposed rule and associated safety zone is necessary to ensure the safety of vessels and people during the Tall Ships Fireworks. The proposed safety zone will be enforced only immediately before, during, and immediately after the event and only upon notice by the Captain of the Port, Sector Lake Michigan. The Captain of the Port, Sector Lake Michigan, will use all appropriate means to notify the public when the safety zone will be enforced, including publication in the **Federal Register** in accordance with 33 CFR 165.7(a). Means of notification may also include Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Although this proposed regulation restricts access to the safety zone, it is not a significant regulatory action because the safety zone will be in effect for a minimal amount of time, and vessels may still transit with the permission of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the specified portion of Chicago Harbor on Lake Michigan from 8:45 p.m. on August 24, 2010, until 9:15 p.m. on August 28, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will be in effect for a limited time and enforced for only 30 minutes each night. Plus, vessels may still transit through the zone with the permission of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Moreover, the Coast Guard will give notice to the public that the regulation is in effect and when it will be enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO2 Jon K. Grob, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7188. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES.** This proposed rule involves the establishment of a safety zone around a fireworks display. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 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.T09–0250 to read as follows:

§ 165.T09–0250 Safety Zone; Tall Ships Fireworks, Chicago Harbor, Chicago, IL.

(a) *Location.* The following area is a temporary safety zone: All U.S. waters of Lake Michigan in the vicinity of Chicago Harbor located off the north east end of Navy Pier, encompassing an area 600 yards by 750 yards bound by a line drawn from 41°53′24″ N, 087°35′55″ W; then north to 41°53′41″ N, 087°35′55″ W; then east to 41°53′41″ N, 087°35′26″ W; then south to 41°53′24″ N, 087°35′26″ W; then west returning to the point of origin (NAD 83).

(b) *Effective period.* This regulation is effective from 8:45 p.m. on August 24, 2010, until 9:15 p.m. on August 28, 2010. It will be enforced between 8:45 p.m. and 9:15 p.m. on August 24, 2010, between the hours of 8:45 p.m. and 9:15 p.m. on August 25, 2010, between the hours of 8:45 p.m. and 9:15 p.m. on August 26, 2010, between the hours of 8:45 p.m. and 9:15 p.m. on August 27, 2010, and again between the hours of 8:45 p.m. and 9:15 p.m. on August 28, 2010. The Captain of the Port, Sector Lake Michigan, or his or her on scene representative may terminate this operation at anytime.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act on his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: April 16, 2010.

L. Barndt,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2010–10205 Filed 4–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0021]

RIN 1625–AA87

Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Seattle, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a security zone at U.S. Coast Guard (USCG) Base Support Unit Seattle, Pier 36, Elliot Bay, Seattle, WA. This permanent security zone is necessary to protect military and visiting foreign vessels, waterfront facilities, and the maritime public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. Entry into or movement within this security zone is prohibited without the permission of the Captain of the Port or a Designated Representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 2, 2010. Requests for public meetings must be received by the Coast Guard on or before June 2, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2010–0021 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 proposed rule, call or e-mail Ensign Ashley M. Wanzer, Sector Seattle Waterways Management, Coast Guard; telephone 206–217–6175, e-mail *SectorSeattleWWM@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:

Public Participation and Request for Comments

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

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0021), 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 (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert "USCG–2010–0021" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

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–2010–0021" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

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).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one June 2, 2010 using one of the

four methods specified under **ADDRESSES.** Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Ensign Ashley M. Wanzer at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Background and Purpose

The potential for terrorist acts requires enhanced security of our ports, harbors, and vessels. This proposed rule will establish a security zone to protect waterfront facilities, persons, and vessels from subversive or terrorist acts on the waters surrounding USCG Base Support Unit (BSU) Seattle, Pier 36, Elliot Bay, WA. The Coast Guard Captain of the Port Puget Sound finds sufficient cause to require this security zone to protect military vessels, facilities and the maritime public located at Pier 36, Elliot Bay, WA. This proposed security zone will be continuously activated in order to maintain the security of both moored vessels and permanent facilities regardless of the physical presence of military vessels within the zone.

Discussion of Proposed Rule

This proposed rule would establish a permanent security zone necessary to protect military and visiting foreign vessels, waterfront facilities, and the maritime public from destruction, loss, or injury from sabotage, subversive acts, or other malicious acts of a similar nature. The security zone would encompass all waters in Elliot Bay east of a line from 47° 35.450′ N 122° 20.585′ W to 47° 35.409′ N 122° 20.585′ W at USCG BSU Seattle, Pier 36, Elliot Bay, Seattle, WA. Entry into or movement within this security zone is prohibited without the permission of the Captain of the Port or a Designated Representative.

Regulatory Analyses

We developed this proposed 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 proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. This proposed rule is not a significant regulatory action because it does not adversely affect the transit of maritime vessels or the recreational boating public to major waterways.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This security zone will not have a significant economic impact on a substantial number of small entities for the following reason: Vessel traffic can pass safely around the security zone.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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 § 165.1334 to read as follows:

§ 165.1334 Security Zone; U.S. Coast Guard BSU Seattle, Pier 36, Elliot Bay, Seattle, WA.

(a) *Location:* The following area is a security zone: All waters in Elliot Bay east of a line from 47° 35.450′ N 122° 20.585′ W to 47° 35.409′ N 122°20.585′ W at Pier 36, Elliot Bay, Seattle, WA.

(b) *Regulations:* Under 33 CFR part 165, subpart D, no person or vessel may enter or remain in the security zone established by this section without the permission of the Captain of the Port Puget Sound or Designated Representative.

(c) *Authorization:* To request authorization to operate within this security zone, contact United States Coast Guard Sector Seattle Joint Harbor Operations Center at 206–217–6001.

Dated: April 6, 2010.

S.E. Englebert,

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

[FR Doc. 2010–10209 Filed 4–30–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Parts 160 and 164

RIN 0991–AB62

HIPAA Privacy Rule Accounting of Disclosures Under the Health Information Technology for Economic and Clinical Health Act; Request for Information

AGENCY: Office for Civil Rights, Department of Health and Human Services.

ACTION: Request for information.

SUMMARY: Section 13405(c) of the Health Information Technology for Economic and Clinical Health (HITECH) Act expands an individual's right under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule to receive an accounting of disclosures of protected health information made by HIPAA covered entities and their business associates. In particular, section 13405(c) of the HITECH Act requires the Department of Health and Human Services ("Department" or "HHS") to revise the HIPAA Privacy Rule to require covered entities to account for disclosures of protected health information to carry out treatment, payment, and health care operations if such disclosures are through an electronic health record. This document is a request for information (RFI) to help us better understand the interests of individuals with respect to learning of such disclosures, the administrative burden on covered entities and business associates of accounting for such disclosures, and other information that may inform the Department's rulemaking in this area.

DATES: Submit comments on or before May 18, 2010.

ADDRESSES: Written comments may be submitted through any of the methods specified below. Please do not submit duplicate comments.

- *Federal eRulemaking Portal:* You may submit electronic comments at *http://www.regulations.gov.* Follow the instructions for submitting electronic comments. Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.
- *Regular, Express, or Overnight Mail:* You may mail written comments (one original and two copies) to the following address only: U.S. Department of Health and Human Services, Office for Civil Rights, *Attention:* HITECH Accounting of Disclosures, Hubert H. Humphrey Building, Room 509F, 200 Independence Avenue, SW., Washington, DC 20201.
- *Hand Delivery or Courier:* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to the following address only: Office for Civil Rights, Attention: HITECH Accounting of Disclosures, Hubert H. Humphrey Building, Room 509F, 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 mail drop slots located in the main lobby of the building.)

Inspection of Public Comments: All comments received before the close of the comment period will be available for public inspection, including any personally identifiable or confidential business information that is included in a comment. We will post all comments received before the close of the comment period at *http://www.regulations.gov.* Because comments will be made public, they should not include any sensitive personal information, such as a person's social security number; date of birth; driver's license number, state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information, or any non-public corporate or trade association information, such as trade secrets or other proprietary information.

FOR FURTHER INFORMATION CONTACT: Andra Wicks, 202–205–2292.

SUPPLEMENTARY INFORMATION:

I. Background

Covered entities under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Title II, Subtitle F—Administrative Simplification, Public Law 104–191, 110 Stat. 2021, are currently required by the HIPAA Privacy Rule at 45 CFR 164.528 to make available to an individual upon request an accounting of certain disclosures of the individual's protected health information over the past six years. For each disclosure, the accounting must include: (1) The date of the disclosure; (2) the name (and address, if known) of the entity or person who received the protected health information; (3) a brief description of the information disclosed; and (4) a brief statement of the purpose of the disclosure (or a copy of the written request for the disclosure). For multiple disclosures to the same person for the same purpose, the accounting is only required to include: (1) For the first disclosure, a full accounting, with the elements described above; (2) the frequency, periodicity, or number of disclosures made during the accounting period; and (3) the date of the last such disclosure made during the accounting period. Section 164.528(a)(1)(i) of the Privacy Rule currently exempts disclosures to carry out treatment, payment, and health care operations from these accounting requirements.[1]

Section 13405(c) of the Health Information Technology for Economic and Clinical Health (HITECH) Act, Public Law 111–5, 123 Stat. 265–66, provides that the exemption at § 164.528(a)(1)(i) of the Privacy Rule for disclosures to carry out treatment, payment, and health care operations no longer applies to disclosures "through an electronic health record." Under section 13405(c), an individual has a right to receive an accounting of such disclosures that covers disclosures made during the three years prior to the request. Section 13400 of the statute defines "electronic health record" as "an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff." We take the opportunity in this RFI to request public comment to inform our regulations under the HITECH Act, which requires that we take into account both the interests of individuals in learning the circumstances under which their protected health information is being disclosed and the administrative burden of accounting for disclosures for treatment, payment, and health care operations through an electronic health record.

We request comments specifically on the questions below. The Department welcomes comments from all stakeholders on these issues, but in addition to hearing from covered entities, is particularly interested in hearing from individuals, consumer advocates and groups, and, regarding technical capabilities, from vendors of electronic health record systems.

II. Questions

1. What are the benefits to the individual of an accounting of disclosures, particularly of disclosures made for treatment, payment, and health care operations purposes?

2. Are individuals aware of their current right to receive an accounting of disclosures? On what do you base this assessment?

3. If you are a covered entity, how do you make clear to individuals their right to receive an accounting of disclosures? How many requests for an accounting have you received from individuals?

4. For individuals that have received an accounting of disclosures, did the accounting provide the individual with the information he or she was seeking? Are you aware of how individuals use this information once obtained?

5. With respect to treatment, payment, and health care operations disclosures, 45 CFR 170.210(e) currently provides the standard that an electronic health record system record the date, time, patient identification, user identification, and a description of the disclosure. In response to its interim final rule, the Office of the National Coordinator for Health Information Technology received comments on this standard and the corresponding certification criterion suggesting that the standard also include to whom a disclosure was made (*i.e.,* recipient) and the reason or purpose for the disclosure. Should an accounting for treatment, payment, and health care operations disclosures include these or other elements and, if so, why? How important is it to individuals to know the *specific* purpose of a disclosure—*i.e.,* would it be sufficient to describe the purpose generally (*e.g.,* for "for treatment," "for payment," or "for health care operations purposes"), or is more detail necessary for the accounting to be of value? To what extent are individuals familiar with the different activities that may constitute "health care operations?" On what do you base this assessment?

6. For existing electronic health record systems:

(a) Is the system able to distinguish between "uses" and "disclosures" as those terms are defined under the HIPAA Privacy Rule? Note that the term "disclosure" includes the sharing of information between a hospital and physicians who are on the hospital's medical staff but who are not members of its workforce.

(b) If the system is limited to only recording access to information without regard to whether it is a use or disclosure, such as certain audit logs, what information is recorded? How long is such information retained? What would be the burden to retain the information for three years?

(c) If the system is able to distinguish between uses and disclosures of information, what data elements are automatically collected by the system for disclosures (*i.e.,* collected without requiring any additional manual input by the person making the disclosure)? What information, if any, is manually entered by the person making the disclosure?

(d) If the system is able to distinguish between uses and disclosures of information, does it record a description of disclosures in a standardized manner (for example, does the system offer or require a user to select from a limited list of types of disclosures)? If yes, is

[1] The core health care activities of "Treatment," "Payment," and "Health Care Operations" are defined in the Privacy Rule at 45 CFR 164.501.

such a feature being utilized and what are its benefits and drawbacks?

(e) Is there a single, centralized electronic health record system? Or is it a decentralized system (*e.g.,* different departments maintain different electronic health record systems and an accounting of disclosures for treatment, payment, and health care operations would need to be tracked for each system)?

(f) Does the system automatically generate an accounting for disclosures under the current HIPAA Privacy Rule (*i.e.,* does the system account for disclosures other than to carry out treatment, payment, and health care operations)?

i. If yes, what would be the additional burden to also account for disclosures to carry out treatment, payment, and health care operations? Would there be additional hardware requirements (*e.g.,* to store such accounting information)? Would such an accounting feature impact system performance?

ii. If not, is there a different automated system for accounting for disclosures, and does it interface with the electronic health record system?

7. The HITECH Act provides that a covered entity that has acquired an electronic health record after January 1, 2009 must comply with the new accounting requirement beginning January 1, 2011 (or anytime after that date when it acquires an electronic health record), unless we extend this compliance deadline to no later than 2013. Will covered entities be able to begin accounting for disclosures through an electronic health record to carry out treatment, payment, and health care operations by January 1, 2011? If not, how much time would it take vendors of electronic health record systems to design and implement such a feature? Once such a feature is available, how much time would it take for a covered entity to install an updated electronic health record system with this feature?

8. What is the feasibility of an electronic health record module that is exclusively dedicated to accounting for disclosures (both disclosures that must be tracked for the purpose of accounting under the current HIPAA Privacy Rule and disclosures to carry out treatment, payment, and health care operations)? Would such a module work with covered entities that maintain decentralized electronic health record systems?

9. Is there any other information that would be helpful to the Department regarding accounting for disclosures through an electronic health record to carry out treatment, payment, and health care operations?

Dated: April 26, 2010.

Georgina Verdugo,

Director, Office for Civil Rights.

[FR Doc. 2010–10054 Filed 4–30–10; 8:45 am]

BILLING CODE 4153–01–P

Notices

Federal Register

Vol. 75, No. 84

Monday, May 3, 2010

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

Agricultural Marketing Service

[Doc. No. AMS–FV–10–0016]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for an extension of a currently approved information collection for the Reporting and Recordkeeping Requirements Under Regulations Under the Perishable Agricultural Commodities Act, 1930, as amended.

DATES: Comments received by July 2, 2010 will be considered.

Additional Information or Comments: You may submit written or electronic comments to PACA Recordkeeping and Reporting Comments, AMS, F&V Programs, PACA Branch, 1400 Independence Avenue, SW., Room 2095–S, Stop 0242, Washington DC 20250–0242; fax: 202–690–4413; or Internet: *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recordkeeping Requirements Under Regulations (Other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

OMB Number: 0581–0031.

Expiration Date of Approval: December 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The PACA was enacted by Congress in 1930 to establish a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables in interstate or foreign commerce. It protects growers, shippers, and distributors dealing in those commodities by prohibiting unfair and fraudulent trade practices.

The law provides a forum for resolving contract disputes, and a mechanism for the collection of damages from anyone who fails to meet contractual obligations. In addition, the PACA provides for prompt payment to fruit and vegetable sellers and for revocation of licenses and sanctions against firms or principals found to have violated the law's standards for fair business practices. The PACA also imposes a statutory trust that attaches to perishable agricultural commodities received by regulated entities, products derived from the commodities, and any receivables or proceeds from the sale of the commodities. The trust exists for the benefit of produce suppliers, sellers, or agents that have not been paid, and continues until they have been paid in full.

The PACA is enforced through a licensing system. All commission merchants, dealers, and brokers engaged in business subject to the PACA must be licensed. Retailers and grocery wholesalers must renew their licenses every three years. All other licensees have the option of a one, two, or three-year license term. Those who engage in practices prohibited by the PACA may have their licenses suspended or revoked.

The information collected pursuant to OMB Number 0581–0031 is used to administer licensing provisions under the PACA, to adjudicate contract disputes, and to enforce the PACA and the regulations. The purpose of this notice is to solicit comments from the public concerning our information collection.

We estimate the paperwork and time burden of the above referenced information collection to be as follows:

Form FV–211, Application for License: Average of .25 hours per application per response.

Form FV–231–1 (or 231–1A, or 231–2, or 231–2A), Application for Renewal or Reinstatement of License: Average of .05 hours per application per response.

Regulations Section 46.13—Letters to Notify USDA of Changes in Business Operations: Average of .05 hours per notice per response.

Regulations Section 46.4—Limited Liability Company Articles of Organization and Operating Agreement: Average of .083 hours with approximately 408 recordkeepers.

Regulations Section 46.18—Record of Produce Received: Average of 5 hours with approximately 6,725 recordkeepers.

Regulations Section 46.20—Records Reflecting Lot Numbers: Average of 8.25 hours with approximately 683 recordkeepers.

Regulations Section 46.46(c)(2)—Waiver of Rights to Trust Protection: Average of .25 hours per notice with approximately 100 principals.

Regulations Sections 46.2(aa)(11) and 46.46(e)(1)—Copy of Written Agreement Reflecting Times for Payment: Average of 20 hours with approximately 2,343 recordkeepers.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.214 hours per response annually.

Respondents: Commission merchants, dealers, and brokers engaged in the business of buying, selling, or negotiating the purchase or sale of commercial quantities of fresh and/or frozen fruits and vegetables in interstate or foreign commerce are required to be licensed under the PACA (7 U.S.C. 499(c)(a)).

Estimated Number of Respondents: 14,492.

Estimated Total Annual Responses: 27,171.

Estimated Number of Responses per Respondent: 1.8749.

Estimated Total Annual Burden on Respondents: 87,328.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: April 27, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–10274 Filed 4–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Inventory Property Management

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection that supports Inventory Property Management. The information is used to evaluate applicant requests to purchase inventory property, determine eligibility to lease or purchase inventory property, and ensure the payment of the lease amount or purchase amount associated with the acquisition of inventory property.

DATES: We will consider comments that we receive by July 2, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number, the OMB control number, and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* J. Lee Nault, Loan Specialist, USDA/FSA/FLP, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0503.
- *E-mail: lee.nault@wdc.usda.gov.*
- *Fax:* 202–690–0949.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting J. Lee Nault at the above address.

FOR FURTHER INFORMATION CONTACT: J. Lee Nault, Loan Specialist, Farm Service Agency, (202) 720–6834.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 767) Farm Loan Programs—Inventory Property Management.

OMB Number: 0560–0234.

Expiration Date: 11/30/2010.

Type of Request: Extension of a currently approved information collection.

Abstract: FSA's Farm Loan Programs provide supervised credit in the form of loans to family farmers to purchase real estate and equipment and finance agricultural production. Inventory Property Management, as specified in 7 CFR part 767, provides the requirements for the management, lease, and sale of security property acquired by FSA. FSA may take title to real estate as part of dealing with a problem loan either by entering a winning bid in an attempt to protect its interest at a foreclosure sale, or by accepting a deed of conveyance in lieu of foreclosure. Information collections established in the regulation are necessary for FSA to determine an applicant's eligibility to lease or purchase inventory property and to ensure the applicant's ability to make payment on the lease or purchase amount.

Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 280.

Estimated Number of Responses per Respondent: 1.04.

Total Annual Responses: 290.

Estimated Total Annual Burden Hours: 432.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on April 20, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–10191 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Direct Loan Servicing—Regular

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension with a revision of a currently approved information collection that supports Direct Loan Servicing-Regular programs. The information is used to determine borrower compliance with loan agreements, assist the borrower in achieving business goals, and regular servicing of the loan account such as graduation, subordination, partial release, and use of proceeds.

DATES: We will consider comments that we receive by July 2, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number, and the OMB control number and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* J. Lee Nault, Loan Specialist, USDA/FSA/FLP, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0503.
- *E-mail: lee.nault@wdc.usda.gov.*
- *Fax:* 202–690–0949.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting J. Lee Nault at the above address.

FOR FURTHER INFORMATION CONTACT: J. Lee Nault, Loan Specialist, Farm Service Agency, (202) 720–6834.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 765) Farm Loan Programs—Direct Loan Servicing—Regular.

OMB Number: 0560–0236.

Expiration Date: 11/30/2010.

Type of Request: Extension of a currently approved information collection.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment, and finance agricultural production. Direct Loan Servicing—Regular, as specified in 7 CFR part 765, provides the requirements related to routine servicing actions associated with direct loans. FSA is required to actively supervise its borrowers and provide credit counseling, management advice and financial guidance. Additionally, FSA must document that credit is not available to the borrower from commercial credit sources in order to maintain eligibility for assistance. Information collections established in the regulation are necessary for FSA to monitor and account for loan security, including proceeds derived from the sale of security, and to process a borrower's request for subordination or partial release of security. Borrowers are required to provide financial information to determine graduation eligibility based on commercial lender standards provided to FSA.

Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 52,288.

Estimated Number of Responses per Respondent: 2.10.

Total Annual Responses: 110,121.

Estimated Total Annual Burden Hours: 60,877.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on April 20, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–10192 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Direct Loan Servicing—Special

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension with a revision of a currently approved information collection that supports Direct Loan Servicing-Special programs. The information is used in eligibility and feasibility determinations on borrower requests for disaster set-aside, primary loan servicing, buyout at market value, and homestead protection, as well as liquidation of security.

DATES: We will consider comments that we receive by July 2, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number, the OMB control number and the title of the information collection of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* J. Lee Nault, Loan Specialist, USDA/FSA/FLP, STOP 0523, 1400 Independence Avenue, SW., Washington, DC 20250–0503.
- E-mail: *lee.nault@wdc.usda.gov.*
- *Fax:* 202–690–0949.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting J. Lee Nault at the above address.

FOR FURTHER INFORMATION CONTACT: J. Lee Nault, Loan Specialist, Farm Service Agency, (202) 720–6834.

SUPPLEMENTARY INFORMATION:

Title: (7 CFR part 766) Farm Loan Programs—Direct Loan Servicing—Special.

OMB Number: 0560–0233.

Expiration Date: 11/30/2010.

Type of Request: Extension of a currently approved information collection with a revision.

Abstract: FSA's Farm Loan Programs provide loans to family farmers to purchase real estate and equipment and finance agricultural production. Direct Loan Servicing—Special, as specified in 7 CFR part 766, provides the requirements for servicing financially distressed and delinquent direct loan borrowers. FSA's loan servicing options include disaster set-aside, primary loan servicing (including reamortization, rescheduling, deferral, write down and conservation contracts), buyout at market value, and homestead protection. FSA also services borrowers who file bankruptcy or liquidate security when available servicing options are not sufficient to produce a feasible plan. The information collections contained in the regulation are necessary to evaluate a borrower's request for consideration of the special servicing actions.

Respondents: Individuals or households, businesses or other for profit farms.

Estimated Annual Number of Respondents: 12,651.

Estimated Number of Responses per Respondent: 1.40.

Total Annual Responses: 17,749.

Estimated Total Annual Burden Hours: 10,337.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(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.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, on April 20, 2010.

Jonathan W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–10190 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2010-0017]

Notice of Revision and Request for Extension of Approval of an Information Collection; Cooperative Agricultural Pest Survey

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and 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 revise an information collection associated with the Cooperative Agricultural Pest Survey and to request extension of approval of the information collection.

DATES: We will consider all comments that we receive on or before July 2, 2010.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0017*) to submit or view comments and to view supporting and related materials available electronically.
- Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2010-0017, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2010-0017.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at (*http://www.aphis.usda.gov*).

FOR FURTHER INFORMATION CONTACT: For information on the Cooperative Agricultural Pest Survey, contact Dr. John Bowers, National Survey Coordinator, Emergency and Domestic Programs, PPQ, APHIS, 4700 River Road Unit 26, Riverdale, MD 20737; (301) 734-3658. 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: Cooperative Agricultural Pest Survey.

OMB Number: 0579-0010.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized, either independently or in cooperation with States, to carry out operations or measures to detect, eradicate, suppress, control, prevent, or retard the spread of plant pests and noxious weeds that are new to or not widely distributed within the United States. This authority has been delegated to the Administrator, Animal and Plant Health Inspection Service (APHIS).

To carry out this mission, the Plant Protection and Quarantine (PPQ) program, APHIS, has joined forces with the States and other agencies to create a program called the Cooperative Agricultural Pest Survey (CAPS). The CAPS program coordinates these efforts through cooperative agreements with the States and other agencies to collect and manage data on plant pests, noxious weeds, and biological control agents, which may be used to control plant pests or noxious weeds.

This program allows the States and PPQ to conduct surveys to detect and measure the presence of exotic plant pests and noxious weeds and to enter survey data into a national computer-based system known as the National Agricultural Pest Information System (NAPIS). This, in turn, allows APHIS to obtain a more comprehensive picture of plant pest and noxious weed conditions in the United States as well as detect, in collaboration with the National Plant Diagnostic Network and the U.S. Department of Agriculture's National Institute of Food and Agriculture (NIFA), population trends in plant pests or noxious weeds that could indicate an agricultural bioterrorism act.

The information captured by CAPS and generated by NAPIS is used by States to predict potential plant pest and noxious weed situations in the United States and by Federal interests (e.g., PPQ and NIFA) to promptly detect and respond to the occurrence of new plant pests or noxious weeds and to provide documentation on plant pests and noxious weeds to facilitate and record the location of those incursions that could directly hinder the export of U.S. farm commodities. The system also provides data management support for PPQ programs, such as imported fire ant, sudden oak death, and gypsy moth.

The CAPS program involves certain information collection activities, including cooperative agreements, pest detection surveys, and the Specimens for Determination Form (PPQ Form 391).

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

We are revising the title of the current collection from "National Agricultural Pest Information System" to "Cooperative Agricultural Pest Survey" to convey that the activity components comprise the CAPS program rather than the computer-based NAPIS.

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 0.2376543 hours per response.

Respondents: State Cooperators and universities participating in the CAPS program.

Estimated annual number of respondents: 108.

Estimated annual number of responses per respondent: 135.

Estimated annual number of responses: 14,580.

Estimated total annual burden on respondents: 3,465 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 27th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–10279 Filed 4–30–10; 8:45 am]

BILLING CODE: 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0058]

Availability of an Environmental Assessment and Finding of No Significant Impact for a Biological Control Agent for Water Hyacinth

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release of an insect, *Megamelus scutellaris*, into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley Wager-Page, Chief, Pest Permitting Branch, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1237; (301) 734–8453.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the release of an insect, *Megamelus scutellaris*, into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations.

On November 16, 2009, we published in the **Federal Register** (74 FR 58939–58940, Docket No. APHIS–2009–0058) a notice[1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of this biological control agent into the continental United States.

We solicited comments on the EA for 30 days ending December 16, 2009. We received one comment, from a State game and fish department. Our responses to the issues raised in the comment can be found in Appendix E of the final EA (see footnote 1).

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *M. scutellaris* into the continental United States for use as a biological control agent to reduce the severity of water hyacinth infestations. The finding, which is based on the EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 27th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–10280 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–34–S

[1] To view the notice, EA, FONSI, and response to comments, go to (*http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0058*).

DEPARTMENT OF AGRICULTURE

Forest Service

Highlands Regional Study: Connecticut and Pennsylvania 2010 Update

AGENCY: Forest Service, USDA.

ACTION: Notice of public meetings; request for comment.

SUMMARY: As required by the Highlands Conservation Act, Public Law 108–421, the Forest Service has drafted the Highlands Regional Study: Connecticut and Pennsylvania 2010 Update. The study is now available (see link below) and identifies high conservation value areas, the impacts of land use change on the natural resources, and conservation strategies in the Connecticut and Pennsylvania portions of the Connecticut, New York, New Jersey, and Pennsylvania Highlands Region. Public comment is being sought on the results of the update to better inform potential consumers of the study results.

DATES: Comments must be received in writing on or before June 17, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Martina Barnes, Regional Planner, U.S. Forest Service, c/o U.S. EPA, Region 2, 290 Broadway, 24th floor, New York, NY 10007. Comments also may be submitted via facsimile to 212–637–3887 or via Internet to: *http://www.na.fs.fed.us/highlands/regional/index.shtm.*

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received by contacting *martinabarnes@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Martina Barnes, Regional Planner, at 212–637–3863. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: In addition to seeking public comment on the 2010 Update, two public meetings are scheduled to discuss the study.

A public meeting to discuss the Pennsylvania portion of the study will be held on May 24, 2010 at 4 p.m. at the Nolde Forest Environmental Education Center in Reading, Pennsylvania.

A public meeting to discuss the Connecticut portion of the study will be held on May 26, 2010 at 6 p.m. at the University of Connecticut Cooperative Extension office in Torrington, Connecticut.

The study is available at *http://www.na.fs.fed.us/highlands/regional/index.shtm.* Comments received in response to this notice, including names and addresses when provided, will be a

matter of public record. Comments will be summarized.

Dated: April 26, 2010.

Kathryn Maloney,

Director, U.S. Forest Service, Northeastern Area.

[FR Doc. 2010–10093 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kern and Tulare Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The first meeting of the Kern and Tulare Counties Resource Advisory Committee will meet in Porterville, California. This will be the first of several meetings to establish a charter, to identify roles and responsibilities, including protocols for the application process, propose due dates for grants, and to determine the process to use to select projects for funding.

The purpose of the Tulare and Kern Counties Resource Advisory Committee is to receive and review project proposals for Fiscal Year 2010 funds available through the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393, reauthorized on October 3, 2008, as part of Pub. L. 110–343).

DATES: The proposed meeting will be held on May 27, 2010 from 6 p.m. to 9 p.m.

ADDRESSES: The meeting will be held at the Sequoia National Forest Headquarters, 1839 South Newcomb Street, Porterville, California, 93257.

FOR FURTHER INFORMATION CONTACT: Priscilla Summers, Kern and Tulare Counties Resource Advisory Committee Designated Federal Official, c/o Sequoia National Forest, Western Divide Ranger District, 32588 Highway 190, Springville, CA 93265 or electronically to *psummers@fs.fed.us,* or by telephone: (559) 539–2607, extension 210.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members.

Dated: April 27, 2010.

Nancy C. Ruthenbeck,

Acting Forest Supervisor.

[FR Doc. 2010–10285 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, May 19, 2010. The purpose of this meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held May 19, 2010 at 6 p.m.

ADDRESSES: The meeting will be held at the Ketchikan—Misty Fjords Ranger District, 3031 Tongass Avenue, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, co District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to Diane Daniels, RAC Coordinator at *ddaniels@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Diane Daniels, RAC Coordinator Ketchikan-Misty Fjords Ranger District, Tongass National Forest, (907) 228–4105.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 22, 2010.

Jeff DeFreest,

District Ranger.

[FR Doc. 2010–10034 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne-Mariposa Counties Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne-Mariposa Counties Resource Advisory Committee (RAC) will meet on May 17, 2010 at the City of Sonora Fire Department, in Sonora, California. The primary purpose of the meeting is to review new project proposals, and to decide which project proponents to invite to make presentations at the June and July RAC meetings.

DATES: The meeting will be held May 17, 2010, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Beth Martinez, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671, extension 320; e-mail *bethmartinez@fs.fed.us.*

SUPPLEMENTARY INFORMATION: *Agenda items include:* (1) Review new project proposals; (2) determine which project proponents to invite to make presentations at the June and July RAC meetings; (3) Public comment. This meeting is open to the public.

Dated: April 2, 2010.

Susan Skalski,

Forest Supervisor.

[FR Doc. 2010–10035 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0026]

National Poultry Improvement Plan; General Conference Committee Meeting and 40th Biennial Conference

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the General Conference Committee of the National Poultry Improvement Plan (NPIP) and the NPIP's 40th Biennial Conference.

DATES: The General Conference Committee meeting will be held on August 31, 2010, from 8 a.m. to 11 a.m. The Biennial Conference will meet on September 1, 2010, from 8 a.m. to 5 p.m., and on September 2, 2010, from 8 a.m. to 12 p.m.

ADDRESSES: The General Conference Committee meeting and Biennial Conference will be held at the Manchester Grand Hyatt San Diego, One Market Place, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew R. Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, 1498 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496.

SUPPLEMENTARY INFORMATION: The General Conference Committee (the Committee) of the National Poultry Improvement Plan (NPIP), representing

cooperating State agencies and poultry industry members, serves an essential function by acting as liaison between the poultry industry and the Department in matters pertaining to poultry health. In addition, the Committee assists the Department in planning, organizing, and conducting the NPIP Biennial Conference. At the meetings and Biennial Conferences, the Committee discusses significant poultry health issues and makes recommendations to improve the NPIP program.

Tentative topics for discussion at the upcoming meetings include:

1. *Salmonella enteritidis* in meat-type chickens.
2. Salmonella isolation and identification protocol.
3. Notifiable avian influenza.
4. Avian mycoplasmosis.

The meetings will be open to the public. The sessions held on September 1 and 2, 2010, will include delegates to the NPIP Biennial Conference. However, due to time constraints, the public will not be allowed to participate in the discussions during either of the meetings. Written statements on meeting topics may be filed with the Committee before or after the meetings by sending them to the person listed under **FOR FURTHER INFORMATION CONTACT**. Written statements may also be filed at the meetings. Please refer to Docket No. APHIS–2010–0026 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 27th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–10278 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2010–0046]

Multi-Agency Informational Meeting Concerning Compliance With the Federal Select Agent Program; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify all interested parties, including individuals and entities possessing, using, or transferring biological agents and toxins listed in 7 CFR 331.3, 9 CFR 121.3 and 121.4, or 42 CFR 73.3 and 73.4, that a meeting will be held to provide regulatory guidance related to the Federal Select Agent Program established under the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The meeting is being organized by the U.S. Department of Agriculture's Animal and Plant Health Inspection Service, the Department of Health and Human Services' Centers for Disease Control and Prevention, and the Department of Justice's Federal Bureau of Investigation. Issues to be discussed include entity registration, security risk assessments, biosafety requirements, and security measures.

DATES: The meeting will be held on June 15, 2010, from 8 a.m. to 6 p.m. Persons who wish to attend the meeting must register by May 15, 2010.

ADDRESSES: The meeting will be held at John Ascuaga's Nugget Hotel, 1100 Nugget Avenue, Sparks, NV.

FOR FURTHER INFORMATION CONTACT: *APHIS:* Ms. Sherylyn Roberson, Veterinary Permit Examiner, APHIS Select Agent Program, VS, ASAP, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1236; (301) 734–5960.

CDC: Dr. Alia Legaux, Public Health Advisor/Inspector, Division of Select Agents and Toxins, CDC, 1600 Clifton Road MS A–46, Atlanta, GA 30333; (404) 718–2000.

SUPPLEMENTARY INFORMATION: Title II of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, "Enhancing Controls on Dangerous Biological Agents and Toxins" (sections 201 through 231), provides for the regulation of certain biological agents and toxins by the Department of Health and Human Services (subtitle A, sections 201–204) and the Department of Agriculture (subtitle B, sections 211–213), and provides for interagency coordination between the two departments regarding overlap agents and toxins (subtitle C, section 221). For the Department of Health and Human Services, the Centers for Disease Control and Prevention (CDC) has been designated as the agency with primary responsibility for implementing the provisions of the Act; the Animal and Plant Health Inspection Service (APHIS) is the agency fulfilling that role for the Department of Agriculture. CDC and APHIS list select agents and toxins in 42 CFR 73.3 and 73.4, 7 CFR 331.3, and 9 CFR 121.3 and 121.4, respectively. The Federal Bureau of Investigation's (FBI) Criminal Justice Information Service conducts security risk assessments of all individuals and nongovernmental entities that request to possess, use, or transfer select agents and toxins.

The meeting announced here is an opportunity for the regulated community (i.e., registered entity responsible officials, alternate responsible officials, and entity owners) and other interested individuals to obtain specific regulatory guidance and information on standards concerning biosafety and biosecurity issues related to the Federal Select Agent Program. Representatives from CDC, APHIS, and the FBI will be present at the meeting to address questions and concerns. Entity registration, security risk assessments, biosafety requirements, and security measures are among the issues that will be discussed.

All attendees must register in advance of the meeting. Interested parties may call 1–800–648–1177 to register. In addition, registration forms are available on the Internet at (*http://www.selectagents.gov*). All registration forms must be submitted by May 15, 2010.

Travel directions to John Ascuaga's Nugget Hotel are available on the Internet at (*http://janugget.travelscream.com/map*). RTC RIDE Route 21 (from RTC Centennial Plaza) serves the hotel.

If you require special accommodations, such as a sign language interpreter, please call or write one of the individuals listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 27th day of April 2010.

Kevin Shea

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010–10277 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–34–S

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Meetings of the Agricultural Policy Advisory Committee for Trade and the Agricultural Technical Advisory Committees for Trade

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice of closed meetings.

SUMMARY: Notice is hereby given that the Agricultural Policy Advisory Committee for Trade (APAC) and the Agricultural Technical Advisory Committees for Trade (ATACs) will hold closed meetings on May 6, 2010.

The advisory committees are administered by the U.S. Department of Agriculture and the Office of the United States Trade Representative (USTR). The meetings are closed to the public in accordance with the Trade Act of 1974, 19 U.S.C. 2155(f)(2), and the Government in the Sunshine Act, 5 U.S.C. 552b(c)(4)(6). USTR has determined that public access to the meetings would seriously compromise the development by the U.S. government of trade policy priorities, negotiating objectives, or bargaining positions with respect to the operation of trade agreements and other matters arising in connection with the development, implementation, and administration of the trade policy of the United States. Topics will include Doha Round negotiations in the World Trade Organization (WTO), WTO accession negotiations, and negotiations in bilateral and regional free trade agreements.

DATES: The meetings are scheduled for May 6, 2010, unless otherwise notified.

ADDRESSES: The meetings will be held at the U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Lorie Fitzsimmons by phone at (202) 720–3430 or by e-mail at *lorie.fitzsimmons@fas.usda.gov.*

SUPPLEMENTARY INFORMATION: The APAC is authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). The purpose of the committee is to advise the Secretary of Agriculture and the USTR concerning agricultural trade policy. The committee is intended to ensure that representative elements of the private sector have an opportunity to express their views to the U.S. government.

The ATACs are comprised of six committees covering the following commodity sectors: Animals and Animal Products; Fruits and Vegetables; Grains, Feed and Oilseeds; Processed Foods; Sweeteners and Sweetener Products and Tobacco; Peanuts and Planting Seeds. Each is authorized by sections 135(c)(1) and (2) of the Trade Act of 1974, as amended (Pub. L. 93–618, 19 U.S.C. 2155). These committees address the technical aspects of issues and provide advice to the benefit of the Secretary of Agriculture and the USTR.

The committees meet at the call of the Secretary of Agriculture and the USTR through the respective Designated Federal Officers depending on the level of activity in trade agreement negotiations and/or other matters concerning the administration of trade policy, the needs of the Secretary of Agriculture and the USTR, and the activity of the technical-level committees.

Signed at Washington, DC, on April 19, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10273 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Request for Nominations for the Colorado Recreation Resource Advisory Committee; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Forest Service, USDA.

ACTION: Notice of request for nominations for the Colorado Recreation Resource Advisory Committee.

SUMMARY: Nominations are being sought for certain positions to serve on the Recreation Resource Advisory Committee (Recreation RAC) operating in the state of Colorado for the Forest Service and Bureau of Land Management (BLM). New members will be appointed by the Secretary of Agriculture (Secretary) and serve three-year terms. Members are being sought to represent each of the following interests: (1) Winter motorized recreation, (2) Summer motorized recreation, (3) Summer non-motorized recreation, (4) Non-motorized outfitter guides, (5) Local environmental groups, (6) State tourism official, and (7) Indian tribes.

The public is invited to submit nominations for membership on the Recreation RAC. Current members who have only served one term may also apply. Application packets for Recreation RACs can be obtained on the Web at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by e-mailing *pdevore@fs.fed.us.* Interested parties may also contact Pam DeVore, U.S. Forest Service, 740 Simms Street, Golden, CO 80401 or call 303–275–5043.

All nominations must consist of a completed application packet that includes background information and other information that addresses a nominee's qualifications.

DATES: All applications must be received by the appropriate office listed below on or before June 15, 2010. This timeframe may be extended if officials do not receive applications for needed positions.

ADDRESSES: Interested persons may submit nominations to the Colorado RRAC by U.S. Mail or Express Delivery to Pam DeVore, Rocky Mountain Regional Office, 740 Simms Street, Golden, CO 80401. Nominations may also be sent via e-mail to *pdevore@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Anyone wanting further information regarding this request for nominations may contact the designated federal official: Steve Sherwood, Recreation RAC DFO, 740 Simms Street, Golden, CO 80401 or 303–275–5135.

SUPPLEMENTARY INFORMATION:

Background: The Federal Lands Recreation Enhancement Act (REA), signed December 2004, requires that the Forest Service and the BLM provide Recreation RACs with an opportunity to make recommendations to the two agencies on certain types of proposed recreation fee changes. REA allows the agencies to use existing advisory councils, such as BLM Resource Advisory Councils (RACs), or to establish new committees as appropriate. The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. In 2006, the Forest Service chartered new Recreation RACs for the states of California and Colorado, and for the Forest Service Pacific Northwest, Eastern and Southern Regions. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota. In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their State be exempt from the REA–R/RAC requirement, and the two Departments concurred with the exemptions. Members were appointed to the Colorado Recreation RAC in July 2007 for either two-year or three-year terms. The Recreation RACs provide recreation fee recommendations to both the Forest Service and the BLM. These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

Recreation RAC Composition: Each Recreation RAC consists of 11 members appointed by the Secretary. REA provided flexibility to modify the specified membership of the RAC "as appropriate" to ensure a fair and balanced representation of recreation interests.

(1) Five persons who represent recreation users and that include, as appropriate, persons representing:

(a) Winter motorized recreation such as snowmobiling;

(b) Winter non-motorized recreation such as snowshoeing, cross-country and downhill skiing, and snowboarding;

(c) Summer motorized recreation such as motorcycling, boating, and offhighway vehicle driving;

(d) Summer non-motorized recreation such as backpacking, horseback riding, mountain biking, canoeing, and rafting; and

(e) Hunting and fishing.

(2) Three persons who represent interest groups that include, as appropriate, the following:

(a) Non-motorized outfitters and guides;

(b) Non-motorized outfitters and guides; and

(c) Local environmental groups.

(3) Three persons, as follows:

(a) State tourism official to represent the state;

(b) A person who represents affected Indian tribes; and

(c) A person who represents affected local government interests.

Nomination Information: Any individual or organization may nominate one or more qualified persons to represent the interests listed above to serve on the Recreation RAC. To be considered for membership, nominees must:

- Identify what interest group they would represent and how they are qualified to represent that group;
- State why they want to serve on the committee and what they can contribute;
- Show their past experience in working successfully as part of a collaborative group; and
- Complete Form AD–755, Advisory Committee or Research and Promotion Background Information.

Letters of recommendation are welcome, but not required. Individuals may also nominate themselves. Nominees do not need to live in a state within a particular Recreation RAC's area of jurisdiction nor live in a state in which Forest Service managed lands are located.

Application packets, including evaluation criteria and the AD–755 form, are available at *http://www.fs.fed.us/passespermits/rrac-application.shtml* or by contacting the Rocky Mountain Region as identified in this notice. Nominees must submit all documents to the appropriate regional contact. Additional information about recreation fees and REA is available at *http://www.fs.fed.us/passespermits/about-rec-fees.shtml.* The Forest Service will also work with Governors and county officials to identify potential nominees. The Forest Service and BLM will review the applications and prepare a list of qualified applicants from which the Secretary shall appoint both members and alternates. An alternate will become a participating member of the Recreation RACs only if the member for whom the alternate is appointed to replace leaves the committee permanently. Recreation RAC members serve without pay but are reimbursed for travel and per diem expenses for regularly scheduled committee meetings.

All Recreation RAC meetings are open to the public, and an open public forum is part of each meeting. Meeting dates and times will be determined by agency officials in consultation with the Recreation RAC members.

Dated: April 21, 2010.

Maribeth Gustafson,

Deputy Regional Forester, Operations.

[FR Doc. 2010–10194 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the Florida Keys Commercial Fishermen's Association on behalf of Florida fishermen who catch and market rock "spiny" lobsters. The Administrator will determine within 40 days whether or not increasing imports of rock "spiny" lobster contributed importantly to a greater than 15 percent decrease in the national average price of rock "spiny" lobsters compared to the average of the 3 preceding marketing years. If a determination is affirmative, fishermen who catch and market rock "spiny" lobsters in Florida will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by email at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10256 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by Birches Cranberry Company on behalf of cranberry producers in New Jersey. The Administrator will determine within 40 days whether or not increasing imports of cranberries contributed importantly to a greater than 15 percent decrease in the national average price of cranberries compared to the average of the 3 preceding marketing years. If a determination is affirmative, producers who produce and market cranberries in New Jersey will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10263 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review

of a petition, for trade adjustment assistance by three fresh blue crab fishermen in the state of Georgia. The Administrator will determine within 40 days whether or not increasing imports of blue crabs contributed importantly to a greater than 15 percent decrease in the quantity of production of fresh blue crabs compared to the average of the 3 preceding marketing years. If a determination is affirmative, commercial fishermen who land and market fresh blue crabs in Georgia will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10272 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the Maine Lobstermen's Association on behalf of U.S. fishermen who catch and market live lobsters (*Homarus americanus*). The Administrator will determine within 40 days whether or not increasing imports of live lobsters (*Homarus americanus*) contributed importantly to a greater than 15 percent decrease in the value of production of lobsters compared to the average of the 3 preceding marketing years. If a determination is affirmative, U.S. fishermen who catch and market live lobsters (*Homarus americanus*) will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10271 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the Louisiana Crawfish Farmers Association on behalf of farm-raised crawfish producers in Louisiana. The Administrator will determine within 40 days whether or not increasing imports of crawfish contributed importantly to a greater than 15 percent decrease in the national average price of crawfish compared to the average of the 3 preceding marketing years. If a determination is affirmative, producers who produce and market farm-raised crawfish in Louisiana will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10269 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the Catfish Farmers of America on behalf of U.S. farm-raised catfish producers. The Administrator will determine within 40 days whether or not increasing imports of catfish contributed importantly to a greater than 15 percent decrease in the national average price of catfish compared to the average of the 3 preceding marketing years. If a determination is affirmative, U.S. producers who produce and market farm-raised catfish will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10267 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the National Asparagus Council on behalf of asparagus producers in California, Michigan, and Washington. The Administrator will determine within 40 days whether or not increasing imports of asparagus contributed importantly to a greater than 15 percent decrease in the quantity of production of asparagus compared to the average of the 3 preceding marketing years. If a determination is affirmative, producers who produce and market asparagus in California, Michigan, and Washington, will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-

mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10266 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance by the North Carolina Commercial Flower Growers Association on behalf of cut lily producers in Georgia, North Carolina, South Carolina, and Virginia. The Administrator will determine within 40 days whether or not increasing imports of lilies contributed importantly to a greater than 15 percent decrease in cash receipts for lilies compared to the average of the 3 preceding marketing years. If a determination is affirmative, producers who produce and market cut lilies in Georgia, North Carolina, South Carolina, and Virginia will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 27, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10265 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today accepted a petition, and began a review of a petition, for trade adjustment assistance submitted by the Southern Shrimp Alliance on behalf of shrimpers in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas. The Administrator will determine within 40 days whether or not increasing imports of shrimp contributed importantly to a greater than 15 percent decrease in the quantity of production of shrimp compared to the average of the 3 preceding marketing years. If a determination is affirmative, shrimpers who land and market shrimp in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas, will be eligible to apply to the Farm Service Agency for technical assistance at no cost and cash benefits.

FOR FURTHER INFORMATION CONTACT: Trade Adjustment Assistance Staff, FAS, USDA, at (202) 720–0638, or by e-mail at: *tradeadjustment@fas.usda.gov.* Additional program information can be obtained at the Web site for the Trade Adjustment Assistance for Farmers program. The URL is *http://www.fas.usda.gov/itp/taa.*

Dated: April 28, 2010.

John D. Brewer,

Administrator, Foreign Agricultural Service.

[FR Doc. 2010–10260 Filed 4–30–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Initial Patent Applications

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing efforts to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on this revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 2010.

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

- *E-mail: InformationCollection@uspto.gov.* Include "0651–0032 comment" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal e-Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by e-mail at *raul.tamayo@uspto.gov* with "Paperwork" in the subject line.

SUPPLEMENTARY INFORMATION

I. Abstract

The USPTO is required by Title 35 of the United States Code, including 35 U.S.C. 131, to examine applications for patents. The USPTO administers the patent statues through various rules in Chapter 37 of the Code of Federal Regulations, including 37 CFR 1.16 through 1.84. The patent statutes and regulations require applicants to provide sufficient information to allow the USPTO to properly examine the application to determine whether it meets the criteria set forth in the patent statutes and regulations to be issued as a patent.

Most applications for patent, including new utility, design, and provisional applications, can be submitted to the USPTO on paper or through EFS–Web. EFS–Web is the USPTO's system for electronic filing of patent correspondence. EFS–Web is accessible via the Internet on the USPTO Web site. The system utilizes standard Web-based screens and prompts to enable users to submit patent documents in Portable Document Format (PDF) directly to the USPTO. The Legal Framework for EFS–Web, available at *http://www.uspto.gov/patents/process/file/efs/guidance/New_legal_framework.jsp,* provides a listing of patent applications and documents permitted to be filed via EFS–Web and patent applications and

documents not permitted to be filed via EFS–Web.

The USPTO has identified continuation/divisional of an international application, utility continuation/divisional, design continuation/divisional, continued prosecution application—design, utility continuation-in-part, and design continuation-in-part applications as types of applications that can be filed electronically that were not identified as being able to be filed electronically in the last renewal of this collection.

The USPTO has also determined that the papers filed under 37 CFR 1.41 to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by 37 CFR 1.51(c)(1) in a provisional application, 37 CFR 1.48 for correction of inventorship in a provisional application, and 37 CFR 1.53(c)(2) to convert a nonprovisional application filed under 37 CFR 1.53(b) to a provisional application under 37 CFR 1.53(c), which were originally overlooked, should be added into the collection at this time. These papers also have a processing fee associated with them that will be added into the collection as well. All of the other fees remain the same.

In order to get a more specific accounting of the additional fees and surcharges that can be applied to the various applications and to simplify the entry of these items into ROCIS, additional application groups have been broken out in this renewal. Previously, the utility, design, and plant applications were broken out in a manner that helped calculate the filing, search, and examination fees, but not in a manner that help calculate the additional fees and surcharges, which made it difficult to calculate the total burden for some of these applications.

There are 28 forms in this collection. The petitions and the papers filed to supply the name or names of the inventor or inventors after the filing date without a cover sheet in a provisional application, to correct inventorship in a provisional application, and to convert a nonprovisional application to a provisional application do not have forms associated with them.

II. Method of Collection

By mail, facsimile (limited to petitions to accept delayed priority claims, petitions to accept non-signing inventors or legal representatives filing by other than all the inventors or a person not the inventor, petitions to accord applications a national stage entry date, papers providing the name or names of the inventor or inventors after the filing date without a cover sheet in a provisional application, requests for correction of inventorship in a provisional application, and requests to convert a nonprovisional application to a provisional application), or hand delivery to the USPTO. As set forth in the Legal Framework for EFS–Web, available at *http://www.uspto.gov/patents/process/file/efs/guidance/New legal framework.jsp,* many types of patent applications and documents can also be submitted electronically through EFS–Web.

III. Data

OMB Number: 0651–0032.

Form Number(s): PTO/SB/01/01A/02/02LR/03/03A/04/05/06/07/13/PCT/14/16/17/18/19/29/29A/101–110.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for profits; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 513,221 responses per year.

Estimated Time per Response: The USPTO estimates that it takes the public approximately 24 minutes to 33 hours and 12 minutes (0.40 to 33.2 hours) to complete this information, depending on the request. This includes the time to gather the necessary information, prepare the application, petition, paper, or CD submission, and submit the completed request to the USPTO. The USPTO believes that, on balance, it takes the same amount of time to gather the necessary information, prepare the new utility, design, or provisional application, and submit it to the USPTO, whether the applicant submits it in paper form or electronically.

Estimated Total Annual Respondent Burden Hours: 11,553,888 hours per year.

Estimated Total Annual Respondent Cost Burden: $3,755,013,600 per year. The USPTO believes that all of the information in this collection will be prepared by an attorney. Using the professional hourly rate of $325 for attorneys in private firms, the USPTO estimates that the total respondent cost burden for this collection is $3,755,013,600 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Original New Utility Applications—No Application Data Sheet	33 hours and 12 minutes	7,450	247,340
Electronic Original New Utility Applications—No Application Data Sheet.	33 hours and 12 minutes	98,950	3,285,140
Original New Plant Applications—No Application Data Sheet	7 hours and 36 minutes	660	5,016
Original New Design Applications—No Application Data Sheet	5 hours and 48 minutes	795	4,611
Electronic Original Design Applications—No Application Data Sheet	5 hours and 48 minutes	10,545	61,161
Original New Utility Applications—Application Data Sheet	33 hours and 12 minutes	11,170	370,844
Electronic Original New Utility Applications—Application Data Sheet	33 hours and 12 minutes	148,430	4,927,876
Original New Plant Applications—Application Data Sheet	7 hours and 36 minutes	350	2,660
Original New Design Applications—Application Data Sheet	5 hours and 48 minutes	970	5,626
Electronic New Design Applications—Application Data Sheet	5 hours and 48 minutes	12,890	74,762
Continuation/Divisional of an International Application	3 hours and 18 minutes	740	2,442
Electronic Continuation/Divisional of an International Application	3 hours and 18 minutes	9,840	32,472
Utility Continuation/Divisional Applications	3 hours and 18 minutes	2,620	8,646
Electronic Utility Continuation/Divisional Applications	3 hours and 18 minutes	34,900	115,170
Plant Continuation/Divisional Applications	2 hours and 12 minutes	150	330
Design Continuation/Divisional Applications	1 hour and 6 minutes	155	171
Electronic Design Continuation/Divisional Applications	1 hour and 6 minutes	2,085	2,294
Continued Prosecution Applications—Design (Request Transmittal and Receipt).	24 minutes	50	20
Electronic Continued Prosecution Applications—Design (Request Transmittal and Receipt).	24 minutes	665	266
Utility Continuation-in-Part Applications	16 hours and 30 minutes	780	12,870
Electronic Utility Continuation-Part-Applications	16 hours and 30 minutes	10,340	170,610

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Plant Continuation-in-Part Applications	3 hours and 48 minutes	35	133
Design Continuation-in-Part Applications	2 hours and 42 minutes	40	108
Electronic Design Continuation-in-Part Applications	2 hours and 42 minutes	520	1,404
Provisional Application for Patent Cover Sheet	15 hours	10,330	154,950
Electronic Provisional Application for Patent Cover Sheet	15 hours	137,220	2,058,300
Petition to Accept Unintentionally Delayed Priority Claim	1 hour	1,090	1,090
Petition to Accept Non-Signing Inventors or Legal Representatives/ Filing by Other Than all the Inventors or a Person not the Inventor.	1 hour	1,950	1,950
Petition under 37 CFR 1.6(f) to Accord the Application under 37 CFR 1.495(b) a National Stage Entry Date.	30 minutes	1	1
Papers filed under the following 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by 37 CFR 1.51 (c)(1) in a provisional application. 1.48—for correction of inventorship in a provisional application 1.53(c)(2)—to convert a nonprovisional application filed under 1.53(b) to a provisional application filed under 1.53(c).	45 minutes	7,500	5,625
Total		513,221	11,553,888

Estimated Total Annual Non-hour Respondent Cost Burden: $771,767,698 per year. There are capital start-up, postage, recordkeeping, and drawing costs, as well as filing fees, associated with this information. There are no maintenance or operation costs associated with this collection.

Applicants can use Compact Disk-Read Only Memory (CD–ROM) or Compact Disk-Recordables (CD–R) to submit patent applications containing large computer program listing/mega tables to the USPTO. Therefore, the cost for purchasing blank CD–R media (CDs), cases and labels for the CDs, and a padded mailing envelope for shipping, are being added to the annual (non-hour) cost for this collection. The USPTO researched the costs for these various supplies. Since these supplies are available in a variety of configurations and since this collection covers many applicants and their specific filing situation, the USPTO is using averages of the possible costs for the various quantities and configurations possible for these items.

Blank CD–R media (with or without plastic jewel cases) can range from $5.99 to $38.99, depending on the quantity of CD–R purchased. The USPTO estimates that the average cost for these items is $20.19.

If jewel cases for the CD–R are not included with the discs, they can be purchased separately in packages ranging from 10 to 100 cases, ranging in cost from $4.99 to $24.99. The USPTO estimates that the average cost for these cases is $13.16.

Software to make the disc labels can be purchased with the labels included along with the software. In some cases, the software can be downloaded. Various companies, such as Avery, Fellowes, Memorex, etc., manufacture this software and prices range from $19.99 to $35.99. The USPTO estimates that the average cost for the software is $28.

Padded mailing envelopes for sending the discs and applications to the USPTO are available in many size and quantity options. Looking at packages of envelopes in the larger 9 and 10 inches sizes, the USPTO found that the cost ranged from $14.99 to $66.99. The USPTO estimates that the average cost for the padded mailing envelopes is $35.38.

In sum, the USPTO estimates the total cost for the blank CD–R media, the jewel cases if needed, software for labeling the CDs, and the padded mailing envelopes at approximately $96.73. The USPTO estimates that 232 patent applications will need to be submitted on CD per year.

The USPTO estimates that the total capital start-up cost for this collection will be $22,441 per year.

The applications, the petition to accept a delayed priority claim, the petition to accept non-signing inventors or legal representatives, and the oversized program listing/mega table CD submissions may be submitted by mail through the United States Postal Service. The USPTO recommends that applicants file initial patent applications (which also include the continued prosecution, continuation and divisional, continuation-in-part, and provisional applications) by Express Mail to establish the filing date (otherwise the filing date of the application will be the date that it is received at the USPTO). The USPTO estimates that an application package will weigh at least one pound. Averaging the Express Mail costs for the USPS's eight mailing zones, the USPTO estimates that the average cost for sending an initial application by Express Mail will be $22.56. The USPTO estimates that up to 36,295 submissions per year may be mailed to the USPTO at an average Express Mail rate of $22.56, for a total postage cost of $818,815.

The petitions for delayed priority claim, for acceptance of non-signing inventors or legal representatives, and for according petitions under 37 CFR 1.495(b) a National Stage Entry Date can be sent by first-class mail. The USPTO estimates that these submissions will average two ounces, for a first-class postage rate of 61 cents. The USPTO estimates that up to 3,041 submissions may be mailed per year. Therefore, the USPTO estimates that the average first-class postage cost for these petitions will be $1,855 per year.

In the case of the oversized program listing/mega table CD submissions, applicants mail a CD, the application transmittal form, and the cover letter to the USPTO. The USPTO estimates that these submissions will average about three ounces and that they will be mailed in large padded mailing envelopes. The USPTO estimates that the average postage rate for these submissions will be $1.22 and that 232 oversized program listing/mega table CD submissions will be received per year. Therefore, the USPTO estimates that the postage costs for these submissions will be $283 per year.

The USPTO estimates that the total postage cost for this collection will be $820,953 per year.

There are recordkeeping costs associated with the oversized program listing/mega table CD submissions and the electronic filing of new utility,

design, and provisional applications; the continuation/divisional of international applications; utility continuation/divisionals; design continuation/divisionals, continued prosecution applications (design); utility continuation-in-part applications; and design continuation-in-part applications. The USPTO advises applicants who submit applications with oversized computer listings/mega tables on CD to retain a back-up copy of the CD and a printed copy of the application transmittal form for their records. The USPTO estimates that it takes an additional 5 minutes for the applicant to produce this back-up CD copy and 2 minutes to print the copy of the application transmittal form, for a total of 7 minutes (0.12 hours) for each oversized submission. The USPTO estimates that approximately 232 applications per year will be submitted with oversized computer program listings/mega tables, for a total of 28 hours per year for retaining the back-up CD and printed application transmittal form. The USPTO believes that these back-up copies will be prepared by paraprofessionals with an estimated hourly rate of $100, for a recordkeeping cost for these back-up copies of $2,800 per year.

In addition, the USPTO also strongly advises applicants who file these applications electronically to retain a copy of the file submitted to the USPTO as evidence of authenticity, in addition to keeping the acknowledgement receipt as clear evidence that the file was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the electronic submission and that approximately 466,385 submissions per year (292,620 utility, 26,705 design, 137,220 provisional, and 9,840 international applications) will use this option, for a total of 466 hours per year. Using the paraprofessional rate of $100 per hour, the USPTO estimates that the recordkeeping cost for retaining a copy of the acknowledgement receipt will be $46,600 per year.

The USPTO estimates that the total recordkeeping cost for this collection will be $49,400 per year.

Patent applicants can submit drawings with the utility, design, plant, and provisional applications. Applicants can prepare these drawings on their own or they can hire patent illustration services firms to create them. As a basis for calculating the drawing costs, the USPTO believes that all applicants will have their drawings prepared by the patent illustration firms. Estimates for the drawings can vary greatly, depending on the number of figures that need to be produced, the total number of pages for the drawings, and the complexity of the drawings. Because there are many variables involved, the USPTO is using the average of the cost ranges found for the application drawings to derive the estimated cost per sheet that is then used to calculate the total drawing costs.

The utility, plant, and design continuation and divisional applications use the same drawings as the initial filings, so they are not included in these totals. The continuation-in-part applications may use some of the same drawings as the initial applications and some new drawings may be submitted, so those numbers are included in these estimates. The drawings for the continued prosecution applications are also included in the drawing cost totals. There are no continuation, divisional, or continuation-in-part provisional applications.

Costs to produce utility drawings can range from $35 to $135 per sheet. The USPTO estimates that it can cost $85 per sheet to produce the utility drawings and that on average, 11 sheets of drawings are submitted, for an average cost of $935 to produce the utility drawings. Out of 277,120 utility applications submitted per year, the USPTO estimates that 91% or 252,179 applications will be submitted with drawings, for a total of $235,787,365 per year.

Costs to produce design drawings can range from $35 to $155 per sheet. The USPTO estimates that it can cost $95 per sheet to produce design drawings and that on average 4.8 sheets of drawings are submitted, for an average cost of $456 to produce design drawings. Out of 26,475 design applications submitted per year, the USPTO estimates that 100% will be submitted with drawings, for a total of $12,072,600 per year.

Photographs are generally submitted for the plant applications, although drawings can also be submitted. The USPTO therefore estimates that the costs to produce the photographs or drawings could range from $35 to $100. The USPTO estimates that it can cost $68 per sheet to produce plant drawings and that on average 2 sheets of drawings are submitted, for an average cost of $136 to produce plant drawings. Out of 1,045 plant application submitted per year, the USPTO estimates that 100% will be submitted with drawings, for a total of $142,120.

Costs to produce the provisional drawings can range from $35 to $135 per sheet. The USPTO estimates that it can cost $85 per sheet to produce provisional drawings and that on average 7.5 sheets of drawings are submitted, for an average cost of $638 to produce provisional drawings. Out of 147,550 provisional applications submitted per year, the USPTO estimates that 78% or 115,089 applications will be submitted with drawings, for a total of $73,426,782 per year.

The USPTO estimates that at least $321,428,867 could be added to the total non-hour cost burden as a result of patent applicants using patent illustration firms to produce the drawings for their utility, design, plant, and provisional applications.

There is also annual non-hour cost burden in the way of filing, search, examination, processing, and additional fees associated with this collection. The filing, search, and examination fees for the utility, plant, design, and provisional applications (including the continuation and divisional, continued prosecution, and continuation-in-part applications) are determined by the filing status (other entity or small entity) the applicant has selected. The filing fees for the electronically-filed new utility applications for small entities are $82, but for the rest of the applications the fees are the same as those for the paper applications. The small entity status does not apply to the petition to accept a delayed priority claim or to the petition to accept non-signing inventors or legal representatives/filing by other than all the inventors or a person not the inventor.

The total estimated filing costs of $449,446,037 for this collection are calculated in the following charts. The first chart shows the filing, search, and examination fees for the various applications. It also includes the processing fee for the papers filed under 37 CFR 1.41, 1.48, and 1.53(c)(2). The USPTO estimates that this collection will have $339,365,175 per year in the filing, search, examination, and processing fees.

Item	Resps (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Original New Utility Applications—No Application Data Sheet—Other Entity	5,585	$330.00	$540.00	$220.00	$1,090.00	$6,087,650.00
Original New Utility Applications-No Application Data Sheet—Small Entity	1,865	165.00	270.00	110.00	545.00	1,016,425.00
Electronic Original New Utility Applications—No Application Data Sheet—Other Entity	74,210	330.00	540.00	220.00	1,090.00	80,888,900.00
Electronic Original New Utility Applications—No Application Data Sheet—Small Entity	24,740	82.00	270.00	110.00	462.00	11,429,880.00
Original New Plant Applications—No Application Data Sheet—Other Entity	495	220.00	330.00	170.00	720.00	356,400.00
Original New Plant Applications—No Application Data Sheet—Small Entity	165	110.00	165.00	85.00	360.00	59,400.00
Original New Design Applications—No Application Data Sheet—Other Entity	415	220.00	100.00	140.00	460.00	190,900.00
Original New Design Applications—No Application Data Sheet—Small Entity	380	110.00	50.00	70.00	230.00	87,400.00
Electronic Original New Design Applications—No Application Data Sheet—Other Entity	5,485	220.00	100.00	140.00	460.00	2,523,100.00
Electronic Original New Design Applications—No Application Data Sheet—Small Entity	5,060	110.00	50.00	70.00	230.00	1,163,800.00
Original New Utility Applications—Application Data Sheet—Other Entity	8,380	330.00	540.00	220.00	1,090.00	9,134,200.00
Original New Utility Applications—Application Data Sheet—Small Entity	2,790	165.00	270.00	110.00	545.00	1,520,550.00
Electronic Original New Utility Applications—Application Data Sheet—Other Entity	111,325	330.00	540.00	220.00	1,090.00	121,344,250.00
Electronic Original New Utility Applications—Application Data Sheet—Small Entity	37,105	82.00	270.00	110.00	462.00	17,142,510.00
Original New Plant Applications—Application Data Sheet—Other Entity	260	220.00	330.00	170.00	720.00	187,200.00
Original New Plant Applications—Application Data Sheet—Small Entity	90	110.00	165.00	85.00	360.00	32,400.00
Original New Design Applications—Application Data Sheet—Other Entity	505	220.00	100.00	140.00	460.00	232,300.00

Item	Resps (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Original New Design Applications—Application Data Sheet—Small Entity	465	110.00	50.00	70.00	230.00	106,950.00
Electronic New Design Applications—Application Data Sheet—Other Entity	6,700	220.00	100.00	140.00	460.00	3,082,000.00
Electronic New Design Applications—Application Data Sheet—Small Entity	6,190	110.00	50.00	70.00	230.00	1,423,700.00
Continuation/Divisional of an International Application—Other Entity	570	330.00	540.00	220.00	1,090.00	621,300.00
Continuation/Divisional of an International Application—Small Entity	170	165.00	270.00	110.00	545.00	92,650.00
Electronic Continuation/Divisional of an International Application—Other Entity	7,580	330.00	540.00	220.00	1,090.00	8,262,200.00
Electronic Continuation/Divisional of an International Application—Small Entity	2,260	82.00	270.00	110.00	462.00	1,044,120.00
Utility Continuation/Divisional Applications—Other Entity	1,965	330.00	540.00	220.00	1,090.00	2,141,850.00
Utility Continuation/Divisional Applications—Small Entity	655	165.00	270.00	110.00	545.00	356,975.00
Electronic Utility Continuation/Divisional Applications—Other Entity	26,175	330.00	540.00	220.00	1,090.00	28,530,750.00
Electronic Utility Continuation Divisional Applications—Small Entity	8,725	82.00	270.00	110.00	462.00	4,030,950.00
Plant Continuation/Divisional Applications—Other Entity	115	220.00	330.00	170.00	720.00	82,800.00
Plant Continuation/Divisional Applications—Small Entity	35	110.00	165.00	85.00	360.00	12,600.00
Design Continuation/Divisional Applications—Other Entity	80	220.00	100.00	140.00	460.00	36,800.00
Design Continuation/Divisional Applications—Small Entity	75	110.00	50.00	70.00	230.00	17,250.00
Electronic Design Continuation/Divisional Applications—Other Entity	1,085	220.00	100.00	140.00	460.00	499,100.00
Electronic Design Continuation/Divisional Applications—Small Entity	1,000	110.00	50.00	70.00	230.00	230,000.00
Continued Prosecution Applications—Design (Request Transmittal and Receipt)—Other Entity	26	220.00	100.00	140.00	460.00	11,960.00
Continued Prosecution Applications—Design (Request Transmittal and Receipt) Small Entity	24	110.00	50.00	70.00	230.00	5,520.00

Item	Resps (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Electronic Continued Prosecution Applications—Design (Request Transmittal and Receipt)—Other Entity	345	220.00	100.00	140.00	460.00	158,700.00
Electronic Continued Prosecution Applications—Design (Request Transmittal and Receipt)—Small Entity	320	110.00	50.00	70.00	230.00	73,600.00
Utility Continuation-in-Part Applications—Other Entity	585	330.00	540.00	220.00	1,090.00	637,650.00
Utility Continuation-In-Part Applications—Small Entity	195	165.00	270.00	110.00	545.00	106,275.00
Electronic Utility Continuation-in-Part Applications—Other Entity	7,755	330.00	540.00	220.00	1,090.00	8,452,950.00
Electronic Utility Continuation-in-Part Applications—Small Entity	2,585	82.00	270.00	110.00	462.00	1,194,270.00
Plant Continuation-In-Part Applications—Other Entity	26	220.00	330.00	170.00	720.00	18,720.00
Plant Continuation-In-Part Applications—Small Entity	9	110.00	165.00	85.00	360.00	3,240.00
Design Continuation-In-Part Applications—Other Entity	21	220.00	100.00	140.00	460.00	9,660.00
Design Continuation-In-Part Applications—Small Entity	19	110.00	50.00	70.00	230.00	4,370.00
Electronic Design Continuation-in-Part Applications—Other Entity	270	220.00	100.00	140.00	460.00	124,200.00
Electronic Design Continuation-in-Part Applications—Small Entity	250	110.00	50.00	70.00	230.00	57,500.00
Provisional Application for Patent Cover Sheets—Other Entity	3,820	220.00	N/A	N/A	220.00	840,400.000
Provisional Application for Patent Cover Sheets—Small Entity	6,510	110.00	N/A	N/A	110.00	716,100.00
Electronic Provisional Application for Patent Cover Sheets—Other Entity	50,770	220.00	N/A	N/A	220.00	11,169,400.00
Electronic Provisional Application for Patent Cover Sheets—Small Entity	86,450	110.00	N/A	N/A	110.00	9,509,500.00
Petition to Accept Unintentionally Delayed Priority Claims	1,090	1,410.00	N/A	N/A	1,410.00	1,536,900.00
Petition to Accept Non-Signing Inventors or Legal Representatives/Filing by Other Than all the Inventors or a Person not the Inventor	1,950	200.00	N/A	N/A	200.00	390,000.00
Petition under 37 CFR 1.6(f) to accord the Application under 37 CFR 1.495(b) a National Stage Entry Date	1	N/A	N/A	N/A	N/A	0.00

Item	Resps (yr) (a)	Filing fee	Search fee	Examination fee	Total fees (b)	Total non-hour cost burden (yr) (a) × (b)
Processing Fee under 37 CFR 1.17(q) for papers filed under the following: ..... 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by 37 CFR 1.51(c)(1) in a provisional application. 1.48—for correction of inventorship in a provisional application 1.53(c)(2)—to convert a non provisional application filed under 1.53(b) to a provisional application filed under 1.53(c)	7,500	50.00	N/A	N/A	50.00	375,000.00
Totals	513,221	.....	.....	.....	.....	339,365,175.00

The second chart calculates the additional fees incurred when an application is filed with additional sheets or excess claims. The USPTO estimates that these fees apply to 252,471 of the 505,721 total applications filed per year. This chart is a subset of the first chart and adds an additional $96,203,957 to the annualized (non-hour) costs; however, it does not change the number of responses. These fees are also determined by the filing status. Plant applications do not have independent claims in excess of 3 or 20, so these items are not included in the chart below.

Item	Responses (yr) (a)	Filing fee for additional sheets and claims	Average fee (b)	Total non-hour cost burden (Yr) (a) × (b)
Provisional Application Size Fee for Each Provisional Application for Patent Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets—Other Entity.	1,837	$270.00 per each 50 Sheets over 100.	$540.00	$991,980.00
Provisional Application Size Fee for Each Provisional Application for Patent Cover Sheet, filed for Each Additional 50 Sheets Exceeding 100 Sheets—Small Entity.	1,709	135.00 per each 50 Sheets over 100.	270.00	461,430.00
Utility Applications, with independent claims in excess of 3—Other Entity.	71,363	220.00 for each claim over 3.	440.00	31,399,720.00
Utility Applications, with independent claims in excess of 3—Small Entity.	25,211	110.00 for each claim over 3.	220.00	5,546,420.00
Utility Applications, filed with Claims in Excess of 20—Other Entity.	99,777	52.00 for each claim over 20.	416.00	41,507,232.00
Utility Applications, filed with Claims in Excess of 20—Small Entity.	40,894	26.00 for each claim over 20.	260.00	10,632,440.00
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 Sheets—Other Entity.	9,301	270.00 for each additional 50 sheets over 100.	540.00	5,022,540.00
Utility Application Size Fee for Each Original New Utility Application, filed with each additional 50 sheets exceeding 100 sheets—Small Entity.	2,358	135.00 for each additional 50 sheets over 100.	270.00	636,660.00
Plant Application Size Fee for Each Original New Plant Application, filed with each additional 50 sheets exceeding 100 sheets—Other Entity.	2	270.00 for each additional 50 sheets over 100.	270.00	540.00
Plant Application Size Fee for Each Original New Plant Application, filed with each additional 50 sheets exceeding 100 sheets—Small Entity.	1	135.00 for each additional 50 sheets over 100.	135.00	135.00
Design Application Size Fee for Each Original New Design Application, filed for each additional 50 sheets that exceeds 100 sheets—Other Entity.	14	270.00 for each additional 50 sheets over 100.	270.00	3,780.00

Item	Responses (yr) (a)	Filing fee for additional sheets and claims	Average fee (b)	Total non-hour cost burden (Yr) (a) × (b)
Design Application Size Fee for Each Original New Design Application, filed for each additional 50 sheets that exceeds 100 sheets—Small Entity.	4	135.00 for each additional 50 sheets over 100.	270.00	1,080.00
Totals	252,471			96,203,957.00

The third chart calculates the surcharges and fees incurred when an application, the search or examination fee, or the oath or declaration is filed late, when the application is filed with multiple dependent claims, or when the application is filed with a non-English specification. The USPTO estimates that these fees apply to 111,231 of the 505,721 applications filed per year. This chart is a subset of the first chart and adds an additional $13,876,905 to the annualized (non-hour) costs; however, it does not change the number of responses. Except for the fee for the non-English specification, these fees are also determined by the filing status. Plant applications are not filed with multiple dependent claims so they are not included in this chart.

Item	Responses (yr) (a)	Surcharge fee for late filing, multiple dependent claims, or non-english specification fees	Total non-hour cost burden (yr) (a) × (b)
Surcharge for Late Filing of Provisional Application for Patent Cover Sheets—Other Entity	2,588	$50.00	$129,400.00
Surcharge for Late Filing of Provisional Application for Patent Cover Sheets—Small Entity	4,675	25.00	116,875.00
Utility Applications, filed with Multiple Dependent Claims—Other Entity	7,101	390.00	2,769,390.00
Utility Applications, filed with Multiple Dependent Claims—Small Entity	2,739	195.00	534,105.00
Utility Applications, filed with a Surcharge for Late filing, search or examination fee, or oath/declaration—Other Entity	55,935	130.00	7,271,550.00
Utility Applications, Filed with a Surcharge for Late Filing, search or examination fee, or oath/declaration—Small Entity	27,158	65.00	1,765,270.00
Plant Applications, filed with a Surcharge for Late Filing, Search or Examination Fee, or Oath/Declaration—Other Entity	172	130.00	22,360.00
Plant Applications, filed with a Surcharge for Late Filing, Search or Examination Fee, or Oath/Declaration—Small Entity	83	65.00	5,395.00
Design Applications, filed with a Surcharge for Late Filing, Search or Examination Fee, or Oath/Declaration—Other Entity	4,400	130.00	572,000.00
Design Applications, filed with a Surcharge for Late Filing, Search or Examination Fee, or Oath/Declaration—Small Entity	2,136	65.00	138,840.00
Non-English Specification	4,244	130.00	551,720.00
Totals	111,231		13,876,905.00

The USPTO estimates that the total non-hour respondent cost burden for this collection, in the form of capital start-up, postage, recordkeeping, and drawing costs, in addition to the filing fees, is $771,767,698 per year.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Information anagement Services, Data Administration Division.

[FR Doc. 2010–10288 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of

the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for June 2010

The following Sunset Reviews are scheduled for initiation in June 2010 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

	Department contact
Antidumping Duty Proceedings	
Carboxymethylcellulose from Finland (A–405–803)	Dana Mermelstein, (202) 482–1391.
Carboxymethylcellulose from Mexico (A–201–834)	Dana Mermelstein, (202) 482–1391.
Carboxymethylcellulose from the Netherlands (A–421–811)	Dana Mermelstein, (202) 482–1391.
Carboxymethylcellulose from Sweden (A–401–808)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Plate in Coils from Belgium (A–423–808) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Plate in Coils from Italy (A–475–822) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Plate in Coils from South Africa (A–791–805) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Plate in Coils from South Korea (A–580–831) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Plate in Coils from Taiwan (A–583–830) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Sheet and Strip in Coils from Germany (A–428–825) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Sheet and Strip in Coils from Italy (A–475–824) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Sheet and Strip in Coils from Mexico (A–201–822) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Sheet and Strip in Coils from Japan (A–588–845) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Sheet and Strip in Coils from South Korea (A–580–834) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Stainless Steel Sheet and Strip in Coils from Taiwan (A–583–831) (2nd Review)	Dana Mermelstein, (202) 482–1391.
Countervailing Duty Proceedings	
Stainless Steel Plate in Coils from Belgium (C–423–809) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Plate in Coils from South Africa (C–791–806) (2nd Review)	Brandon Farlander, (202) 482–0182.
Stainless Steel Sheet and Strip in Coils from South Korea (C–580–835) (2nd Review)	Brandon Farlander, (202) 482–0182.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in June 2010.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 23, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10246 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended ("the Act"), may request, in accordance with 19 CFR 351.213 of the Department of Commerce's ("the Department") regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection ("CBP") data for U.S. imports during the period of review ("POR"). We intend to release the CBP data under Administrative Protective Order ("APO") to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity To Request A Review: Not later than the last day of May 2010,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of review
Antidumping Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/09–4/30/10
Brazil: Iron Construction Castings, A–351–503	5/1/09–4/30/10
Canada: Citric Acid and Citrate Salt, A–122–853	11/20/08–5/19/09
	5/29/09–4/30/10
France: Antifriction Bearings, Ball A–427–801	5/1/09–4/30/10
Germany: Antifriction Bearings, Ball, A–428–801	5/1/09–4/30/10
India:	
Silicomanganese, A–533–823	5/1/09–4/30/10
Welded Carbon Steel Pipe and Tubes, A–533–502	5/1/09–4/30/10
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/09–4/30/10
Stainless Steel Plate in Coils, A–475–822	5/1/09–4/30/10
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/09–4/30/10
Gray Portland Cement and Clinker, A–588–815	5/1/09–4/30/10
Kazakhstan: Silicomanganese, A–834–807	5/1/09–4/30/10
Republic of Korea:	
Polyester Staple Fiber, A–580–839	5/1/09–4/30/10
Stainless Steel Plate in Coils, A–580–831	5/1/09–4/30/10
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/09–4/30/10
Taiwan:	
Certain Circular Welded Carbon Steel Pipe and Tubes, A–583–008	5/1/09–4/30/10
Polyester Staple Fiber, A–583–833	5/1/09–4/30/10
Stainless Steel Plate in Coils, A–583–830	5/1/09–4/30/10
The People's Republic of China:	
Certain Circular Welded Carbon Quality Steel Line Pipe, A–570–935	11/6/08–4/30/10
Citric Acid and Citrate Salt, A–570–937	11/20/08–5/19/09
	5/29/09–4/30/10
Iron Construction Castings, A–570–502	5/1/09–4/30/10
Pure Magnesium, A–570–832	5/1/09–4/30/10
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/09–4/30/10
Turkey:	
Light-Walled Rectangular Pipe and Tube, A–489–815	5/1/09–4/30/10
Welded Carbon Steel Pipe and Tube, A–489–501	5/1/09–4/30/10
Venezuela: Silicomanganese, A–307–820	5/1/09–4/30/10
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/09–12/31/09
Brazil: Iron Construction Castings, C–351–504	1/1/09–12/31/09
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/09–12/31/09
The People's Republic of China: Citric Acid and Citrate Salt, C–570–938	9/19/08–12/31/09
Suspension Agreements	
None	

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2010. If the Department does not receive, by the last day of May 2010, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order if such a gap period is applicable to the POR.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 23, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10257 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Notice of Deadline Extension To Receive Nominations for the National Advisory Council on Minority Business Enterprise

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency solicited nominations for individuals to serve as members of the National Advisory Council for Minority Business Enterprise pursuant to a **Federal Register** notice published on March 29, 2010 (75 FR 15413). The March 29, 2010 notice provided that all applications must be received by the Minority Business Development Agency, U.S. Department of Commerce, by 5 p.m. Eastern Daylight Time (EDT) on May 3, 2010. This notice extends the nomination period to May 10, 2010 at 5 p.m. (EDT), in order to provide the public with additional time to submit nominations. The requirements for submitting nominations and the evaluation criteria for selecting members contained in the March 29, 2010 notice shall continue to apply in their entirety and, for convenience, are being republished in this notice. Persons who have previously submitted nominations remain under consideration and do not need to resubmit their nomination materials, although they may amend or revise such nomination materials on or before the extended closing date of May 10, 2010. The purpose of the NACMBE is to advise the Secretary of Commerce (Secretary) on key issues pertaining to the growth and competitiveness of the nation's Minority Business Enterprises (MBEs).

DATES: Complete nomination packages for NACMBE membership must be received by the Department of Commerce on or before May 10, 2010 at 5 p.m. (EDT).

ADDRESSES: Nomination packages may be submitted through the mail or may be submitted electronically. Interested persons are encouraged to submit nominations electronically. The deadline is the same for nominations submitted through the mail and for nominations submitted electronically.

1. *Submission by Mail:* Nominations sent by mail should be addressed to the U.S. Department of Commerce, Minority Business Development Agency, Office of Legislative, Education and Intergovernmental Affairs, Attn: Stephen Boykin, 1401 Constitution Avenue, NW., Room 5063, Washington, DC 20230. Applicants are advised that the Department of Commerce's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service to ensure nomination packages are received by the Department of Commerce by the deadline set forth in this notice.

2. *Electronic Submission:* Nomination sent electronically should be addressed to: *NACMBEnominations@mbda.gov.* Please include "NACMBE Nomination" in the title of the e-mail.

FOR FURTHER INFORMATION CONTACT: Stephen Boykin, MBDA Office of Legislative, Education and Intergovernmental Affairs, at (202) 482–1712 or by e-mail at: *NACMBEnominations@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to Executive Order 11625, as amended, the Department of Commerce, through the Minority Business Development Agency (MBDA), is charged with promoting the growth and competitiveness of the nation's minority business enterprise. NACMBE is established in the Department of Commerce as a discretionary advisory committee in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration. The NACMBE will be administered primarily by MBDA.

Although MBDA has received many applications and is still considering all applications received to date, the Agency is seeking a broader applicant pool. By extending the application period, the Agency also hopes to have a broader applicant pool to reflect greater ethnic, gender, and industry diversity. The requirements for submitting nominations and the criteria for selecting members contained in the March 29, 2010 notice to continue to apply in their entirety and are republished herein for convenience. Persons who have previously submitted nominations remain under consideration and do not need to

resubmit their nomination materials, although they may amend such nomination materials on or before the extended closing date of May 10, 2010.

Objectives and Scope of Activities: NACMBE will advise the Secretary on key issues pertaining to the growth and competitiveness of the nation's MBEs, as defined in Executive Order 11625, as amended, and 15 CFR 1400.1. NACMBE will provide advice and recommendations on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace. These policy issues may include, but are not limited to:

- Methods for increasing jobs in the health care, manufacturing, technology, and "green" industries;
- Global and domestic barriers and impediments;
- Global and domestic business opportunities;
- MBE capacity building;
- Institutionalizing global business curriculums at colleges and universities and Facilitating the entry of MBEs into such programs;
- Identifying and leveraging pools of capital for MBEs;
- Methods for creating high value loan pools geared toward MBEs with size, scale and capacity;
- Strategies for collaboration amongst minority chambers, trade associations and nongovernmental organizations;
- Accuracy, availability and frequency of economic data concerning minority businesses;
- Methods for increasing global transactions with entities such as but not limited to the Export-Import Bank, OPIC and the IMF; and
- Requirements for a uniform and reciprocal MBE certification program.

The advice and recommendations provided by NACMBE may take the form of one or more written reports. NACMBE will also serve as a vehicle for an ongoing dialogue with the MBE community and with other stakeholders.

Membership: NACMBE shall be composed of not more than 25 members. The NACMBE members shall be distinguished individuals from the nonfederal sector appointed by the Secretary. The members shall be recognized leaders in their respective fields of endeavor and shall possess the necessary knowledge and experience to provide advice and recommendations on a broad range of policy issues that impact the ability of MBEs to successfully participate in the domestic and global marketplace.

NACMBE members shall be appointed as Special Government Employees for a two-year term and shall serve at the pleasure of the Secretary. Members may be re-appointed to additional two-year terms, without limitation. The Secretary may designate a member or members to serve as the Chairperson or Vice-Chairperson(s) of NACMBE. The Chairperson or Vice-Chairperson(s) shall serve at the pleasure of the Secretary.

NACMBE members will serve without compensation, but will be allowed reimbursement for reasonable travel expenses, including a per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, as amended, for persons serving intermittently in Federal government service. NACMBE members will serve in a solely advisory capacity.

Eligibility. In addition to the above criterion, eligibility for NACMBE membership is limited to U.S. citizens who are not full-time employees of the Federal Government, are not registered with the U.S. Department of Justice under the Foreign Agents Registration Act and are not federally-registered lobbyists pursuant to the Lobbying Disclosure Act of 1995, as amended, at the time of appointment to the NACMBE.

Nomination Procedures and Selection of Members: The Department of Commerce is accepting nominations for NACMBE membership for the upcoming 2-year charter term beginning in May 2010. Members shall serve until the NACMBE charter expires in May 2012, although members may be re-appointed by the Secretary without limitation. Nominees will be evaluated consistent with the factors specified in this notice and their ability to successfully carryout the goals of the NACMBE.

For consideration, a nominee must submit the following materials: (1) Resume, (2) personal statement of interest, including a summary of how the nominee's experience and expertise would support the NACMBE objectives; (3) an affirmative statement that the nominee is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (4) an affirmative statement that: (a) the nominee is not currently a federally-registered lobbyist and will not be a federally-registered lobbyist at the time of appointment and during his/her tenure as a NACMBE member, or (b) if the nominee is currently a federally-registered lobbyist, that the nominee will no longer be a federally-registered lobbyist at the time of appointment to the NACMBE and during his/her tenure as a NACMBE member. All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be submitted by either mail or electronically, but not by both methods. Self-nominations will be accepted.

NACMBE members will be selected in accordance with applicable Department of Commerce guidelines and in a manner that ensures that NACMBE has a balanced membership. In this respect, the Secretary seeks to appoint members who represent a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

All appointments shall be made without discrimination on the basis of age, ethnicity, gender, disability, sexual orientation, or cultural, religious, or socioeconomic status. All appointments shall also be made without regard to political affiliations.

Dated: *April 28, 2010.*

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2010–10281 Filed 4–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–0180 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 2009, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on CVP 23 from India. *See Carbazole Violet Pigment 23 from India: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 68038 (December 22, 2009) (*Preliminary Results*). The period of review is December 1, 2007, through November 30, 2008. As explained in the memorandum from the Deputy Assistant Secretary for Import

Administration, we have exercised our discretion to toll deadlines for the duration of the closure of the Federal Government from February 5 through February 12, 2010. Thus, all deadlines in this review have been extended by seven days. The revised deadline for the final results of this administrative review is currently April 28, 2010. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final determination to a maximum of 180 days after the date on which the preliminary results are published. See also 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this administrative review by the current deadline of April 28, 2010, because we are continuing to examine the issue related to the export–subsidy adjustment addressed by the petitioner and respondent in briefs submitted in response to the *Preliminary Results*. Therefore, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), we are extending the time period for issuing the final results of this review by 60 days until June 27, 2010.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: April 26, 2010.

Edward C. Yang,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10261 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping and countervailing duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping and countervailing duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A–570–898	731–TA–1082	PRC	Chlorinated Isocyanurates	Jennifer Moats, (202) 482–5047.
A–469–814	731–TA–1083	Spain	Chlorinated Isocyanurates	Jennifer Moats, (202) 482–5047.
A–570–101	731–TA–101	PRC	Greige Polyester Cotton Printcloth (3nd Review).	Jennifer Moats, (202) 482–5047.
A–570–001	731–TA–125	PRC	Potassium Permanganate (3rd Review).	Jennifer Moats, (202) 482–5047.
A–351–503	731–TA–262	Brazil	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482–1391.
A–122–503	731–TA–263	Canada	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482–1391.
A–570–502	731–TA–265	PRC	Iron Construction Castings (3rd Review).	Dana Mermelstein, (202) 482–1391.
C–351–504	701–TA–249	Brazil	Heavy Iron Construction Castings (3rd Review).	Brandon Farlander, (202) 482–0182.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: "*http://ia.ita.doc.gov/sunset/*." All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b)) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. *See* 19 CFR 351.218(d)(1)(i). The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: April 19, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–10258 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW11

Marine Mammals; File No. 14514

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the University of Florida, Aquatic Animal Program, College of Veterinary Medicine, Gainesville, FL 32610 (Ruth Francis-Floyd, Responsible Party) has applied in due form for a permit to receive, import and export marine mammal specimens for scientific research.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 2, 2010.

ADDRESSES: The application and related documents are available for review by selecting "Records Open for Public Comment" from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov*, and then selecting File No. 14514 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

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 Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to NMFS.Pr1Comments@noaa.gov. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The objectives of this research are to study various aspects of disease afflicting marine mammals including viral pathogens and brevetoxin studies; develop a marine mammal histology database and atlas, marine mammal cell lines; and conduct comparative morphology. Marine mammal parts would be obtained from the following sources: samples collected as part of routine husbandry procedures using captive stocks; other permitted academic, federal, and state institutions involved in marine mammal research; in conjunction with legal subsistence harvests; from marine mammals caught incidental to fisheries; or from animals in foreign countries following the host countries legal operations. The samples would then be received or imported to the investigators. Samples may be exported for research or archiving. Marine mammal parts (hard and soft parts) would not exceed 200 animals per year from animals within the order Cetacea (dolphins, porpoises and whales) and 100 animals per year from animals within the order Pinnipedia (sea lions and seals but excluding walruses), with unlimited sampling from each animal to maximize use. There would not be incidental take or take of live animals. The requested permit period is five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically

excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 26, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–10259 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW21

Marine Mammals; File Nos. 15498 and 15500

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Chicago Zoological Society - Brookfield Zoo, 3300 Golf Road, Brookfield, IL 60513, and Georgia Aquarium, 225 Baker Street, NW, Atlanta, GA 30313, have each applied in due form for a permit to import Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display.

DATES: Written, telefaxed, or e-mail comments must be received on or before June 2, 2010.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

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;

File No. 15498: Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

File No. 15500: Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on these applications should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

File No. 15498: Chicago Zoological Society requests authorization to import one male and one female captive born bottlenose dolphin from Dolphin Quest Bermuda, Hamilton, Bermuda, to the Brookfield Zoo, Brookfield, IL, for the purpose of public display. The Brookfield Zoo is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Alliance of Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 33–C–0003, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 - 59).

File No. 15500: Georgia Aquarium requests authorization to import two male captive born bottlenose dolphins from Dolphin Experience, Ltd., Freeport, Grand Bahama Island, The Bahamas, and three female captive born bottlenose dolphins from Dolphin Quest Bermuda, Hamilton, Bermuda, to its facility in Atlanta, Georgia, for purposes of public display. Georgia Aquarium is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the Alliance of Marine Mammal Parks and Aquariums and the Association of Zoos and Aquariums; and (3) holds an Exhibitor's License, number 57–C–0220, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. §§ 2131 - 59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicants have demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicants' expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the applications.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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: April 28, 2010.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–10243 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV74

International Whaling Commission; 62nd Annual Meeting; Announcement of Public Meetings

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

ACTION: Notice of meetings.

SUMMARY: This notice announces the dates, times, and locations of the public meetings being held prior to the 62nd annual International Whaling Commission (IWC) meeting.

DATES: The public meetings will be held May 20 and May 26, 2010, at 1 p.m.

ADDRESSES: The May 20 meeting on will be held in the NOAA Western Regional Center Auditorium, 7600 Sand Point Way N.E., Seattle, WA 98115. The May 26 meeting will be held in the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, 202–482–3689.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United

States under the International Convention for the Regulation of Whaling, 1946. The U.S. Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. The U.S. Commissioner is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies.

Once the draft agenda for the annual IWC meeting is completed, it will be posted on the IWC Secretariat's website at *http://www.iwcoffice.org*.

NOAA will hold meetings prior to the annual IWC meeting to discuss the tentative U.S. positions for the upcoming IWC meeting. Because the meeting discusses U.S. positions, the substance of the meeting must be kept confidential. Any U.S. citizen with an identifiable interest in U.S. whale conservation policy may participate, but NOAA reserves the authority to inquire about the interests of any person who appears at a meeting and to determine the appropriateness of that person's participation.

Persons who represent foreign interests may not attend. These stringent measures are necessary to protect the confidentiality of U.S. negotiating positions and are a necessary basis for the relatively open process of preparing for IWC meetings.

The May 20 meeting will be held in the NOAA Western Regional Center Auditorium, 7600 Sand Point Way N.E., Seattle, WA 98115. The May 26 meeting will be held in the NOAA Science Center Room, 1301 East-West Highway, Silver Spring, MD 20910. Photo identification is required to enter the building.

Special Accommodations

Both meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ryan Wulff, 202–482–3689, by May 14, 2010.

Dated: April 27, 2010.

Rebecca J. Lent,

Director, Office of International Affairs,National Marine Fisheries Service.

[FR Doc. 2010–10242 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW19

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee, in May, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, May 19, 2010 at 9 a.m.

ADDRESSES: This meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; telephone: (401) 831–3900; fax: (401) 751–0007.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review the status of scallop actions recently adopted (Framework 21) and under development (Amendment 15). The Committee will review a draft public hearing document for Amendment 15 public hearings that are being scheduled this summer. The Committee will also discuss initiation of Framework 22 and identify potential measures to be considered by the Council in June. Framework 22 will set fishery specifications for fishing years 2011 and 2012. The committee may discuss other topics at their discretion.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 27, 2010.

William D. Chappell,

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

[FR Doc. 2010–10188 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW18

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Observer Advisory Committee (OAC) will meet in Seattle, WA.

DATES: The meeting will be held on May 25–26, 2010 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center, 7600 Sand Point Way NE, Bldg 4, Traynor Conference Room, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Nicole Kimball, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The primary purpose of the committee meeting is to review the initial review draft analysis for restructuring the North Pacific observer program for groundfish and commercial halibut vessels, and provide recommendations to the Council.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will

be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 27, 2010.

William D. Chappell,

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

[FR Doc. 2010–10187 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW17

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: North Pacific Fishery Management Council will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors on May 19–20–21, 2010.

DATES: The meeting will begin at 1 p.m. on Wednesday, May 19, 2010, recess at 5:30 p.m. or when business is complete; reconvene at 8 a.m. on Thursday, May 20, 2010, recess at 5:15 p.m. or when business is complete; and reconvene at 8 a.m. on Friday, 21, 2010 and adjourn by 12 noon.

ADDRESSES: The meeting will be held at the Hotel Captain Cook, 939 W 5th Avenue, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Chris Oliver; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, May 19, 1 p.m.

Welcome comments and open session with Councils; Report from North Pacific Research Board/Alaska Ocean Observing System; adopt the CCC Terms of Reference; discuss Ocean Policy Task Force and Coastal and Marine Spatial Planning; Catch Share Implementation Plan.

Thursday, May 20, 8 a.m.

Council progress on developing Catch Share Programs; Annual Catch Limits (ACLs), and Scientific Statistical Committee integration. Updates on National Environmental Policy Act (NEPA); Marine Protection Area (MPA) nominations; President's budget and other budget issues, 2010 National SSC workshop, National Standard 2 Guidelines; Council/NMFS relations concerning regulatory review process; Outreach activities; Recreational Fishery Report; and Endangered Species/Marine Mammal Protection Act issues.

Friday, May 21, 8 a.m.

Discuss Statement of Organizations, Operations and Procedures (SOPPS); Enforcement Issues; 5-year grant application process; and discuss the January 2011 CCC meeting agenda.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: April 27, 2010.

William D. Chappell,

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

[FR Doc. 2010–10186 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW16

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Skate Committee and Advisory Panel, in May, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 18, 2010 at 9:30 a.m.

ADDRESSES: This meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600; fax: (978) 535–8238.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Oversight Committee and Advisory Panel will meet jointly to discuss and develop alternatives and options for an action that would amend the Skate Fishery Management Plan for the 2011 and 2012 fishing years, based on updated survey and fishery information. Other unrelated skate management issues may also be discussed at the Chair's discretion, but no formal action will be taken on them.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: April 27, 2010.

William D. Chappell,

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

[FR Doc. 2010–10185 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XW15

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a meeting of the Standing, Special Reef Fish and Special Red Drum Scientific and Statistical Committees.

DATES: The meeting will convene at 9 a.m. on Wednesday, May 19, 2010 and conclude by 3 p.m. on Friday, May 21, 2010.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607; telephone: (813) 348–1630.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Committee will meet to discuss a number of issues related to the development of Reef Fish Amendment 32 (gag rebuilding and gag and red grouper adjustments to annual catch limits) and the Generic Annual Catch Limits/Accountability Measures (ACL/AM) Amendment. During part of the meeting, the Standing SSC will meet jointly with the Special Red Drum SSC to review available information to determine if a red drum acceptable biological catch (ABC) can be established in the exclusive economic zone (EEZ). The remainder of the meeting will be a joint meeting of the Standing and Special Reef Fish SSC. The SSC will (1) review updated yield projections for gag and red grouper that incorporate 2009 landings data and will re-evaluate their ABC recommendations for these stocks based on the new information; (2) review a decision-making spreadsheet being prepared by the Southeast Regional Office for analyses of combinations of bag limits, closed seasons, minimum size limits and slot limits for the recreational gag fishery to determine if use of the spreadsheet represents the best available scientific information when evaluating potential management measures; (3) review a critique by the Southeast Fisheries Science Center of a species groupings analyses prepared by the Southeast Regional Office, and will consider possible revisions to the proposed species groupings for purposes of setting annual catch limits; (4) develop a strategy for assigning ABCs to species and species groupings that require an ABC under the Generic ACL/AM Amendment; (5) continue the process of developing an ABC control rule for assigning future ABCs; (6) review tentative ABC values used by the Council on an interim basis in order to develop alternatives for allowable octocorals, stone crab claws, royal red shrimp, and the Peneid shrimp species in the Generic ACL/AM Amendment options paper; and (7) discuss possible strategies to resolve differences between the Gulf Council SSC and the South Atlantic Council SSC in ABC recommendations for the black grouper stock, which straddles jurisdictional boundaries.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org*.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: April 27, 2010.

William D. Chappell,

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

[FR Doc. 2010–10184 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AT31

American Lobster Fishery Management

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

ACTION: Notice of public meetings; request for comments.

SUMMARY: NMFS has prepared a draft environmental impact statement (DEIS) that identifies several proposed management actions and alternatives for the American lobster fishery in Federal waters. The management actions are based on recommendations to NMFS by the Atlantic States Marine Fisheries Commission (Commission) as part of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP). Two of the three proposed management measures evaluated in the DEIS would implement limited access programs (LAPs), limiting future access in two Lobster Conservation Management Areas (Areas) Area 2 and the Outer Cape Area based upon historical participation within the fishery. The third proposed measure would implement an individual transferable trap program (ITT) in three Areas--Area 2, Area 3, and the Outer Cape Area. The DEIS evaluates four ITT alternatives. NMFS has not selected a preferred alternative to implement the ITT program. NMFS will hold public meetings to receive comments on the potential biological, economic, and social impacts of proposed measures evaluated in this DEIS.

DATES: Written comments on the DEIS must be received no later than 5 p.m., Eastern Standard Time, on June 29, 2010. Also, verbal comments may be presented at public meetings which are

scheduled to be held in Maine, New Hampshire, Massachusetts, Rhode Island, New York, and New Jersey. See **SUPPLEMENTARY INFORMATION** for meeting dates, times, locations, and special accommodations.

ADDRESSES: Written comments on the DEIS may be submitted by any one of the following methods:

- Electronic submissions: Submit all electronic public comments to the following email address: *LobsterComment@noaa.gov*
- Mail: Lobster Comments - Sustainable Fisheries Division, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298.
- Fax: (978) 281–9117.
- Hand Delivery or Courier: Deliver comments to the above Mail address.

Instructions: All comments received are part of the public record and will generally be available without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publically accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the DEIS, which includes a draft environmental impact statement, an initial regulatory impact review, and an initial regulatory flexibility analysis, are available from the Sustainable Fisheries Division, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2298 mark the outside of the envelope Lobster DEIS; fax: (978) 281–9117; email: *RequestDEIS@noaa.gov*; telephone 978–675–2162. The DEIS is also available at the Northeast Regional Office website: *http://www.nero.noaa.gov/nero/* and select menu item "Hot News".

FOR FURTHER INFORMATION CONTACT: Bob Ross, NMFS, Northeast Region, telephone: (978) 675–2162; fax (978) 281–9117; email: *Bob.Ross@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is considering several new management measures for the American lobster fishery in Federal waters in response to the Commission's recommendations in the lobster ISFMP.

Limited Access Program

NMFS is considering implementing a limited access program to control fishing effort in the lobster trap fishery in the Federal waters of Area 2 (the management area that includes the state and Federal waters adjacent to southern MA and RI), and in the Outer Cape Area (the management area that includes the state and Federal waters adjacent to Cape Cod, MA). Future trap fishing access in Area 2 and the Outer Cape Area would be limited to only those Federal permit holders who can substantiate a history of trap fishing in these areas. Under the Commission's plan (NMFS's preferred Alternative), the eligibility criteria for access to these management areas would be based upon industry advice developed by the ISFMP's lobster conservation management teams, and approved by the Commission in Addenda VII and XIII to the ISFMP.

In the Outer Cape Area, eligible permit holders would have to meet all of the following criteria:

1. Federal lobster permit holders would be qualified to fish with traps under a limited access program in the Outer Cape Area based on a demonstration of prior trap fishing history (1999–2001) within the Outer Cape Area.
2. Once qualified, individual history-based trap allocations for Outer Cape Area Federal lobster permit holders would be based on effective traps fished during 2000–2002.

In Area 2, eligible permit holders would have to meet all of the following criteria:

1. Federal lobster permit holders would be qualified to fish with traps under a limited access program in Area 2 based on a demonstration of prior trap fishing history (2001–2003) in Area 2.
2. Once qualified, individual history-based trap allocations for Area 2 Federal lobster permit holders would be based on effective traps fished during 2001–2003.

Individual Transferable Trap Program

This DEIS also analyzes the potential biological, social, and economic impacts of an individual transferable trap program for three lobster Areas: Area 2; the Outer Cape Area; and Area 3 (the offshore Area from the U.S./Canada border to Cape Hatteras, NC). The proposed ITT program would allow Federal lobster permit holders fishing with traps in Area 2, the Outer Cape Area, and Area 3, once qualified and in receipt of an individual history based trap allocation, to transfer (buy and/or sell) blocks of lobster traps to other lobstermen. By allowing fishers to buy and sell lobster traps, the ITT program is meant to provide permit holders with opportunities to enhance economic efficiency or respond to inadequate trap allocation by obtaining additional allocation from other fishers who may want to scale down their own business or leave the fishery. With each transfer of traps, a percentage of the total traps transferred, ranging from 10 to 20 percent, would be permanently eliminated as a resource conservation tax. In the long run, however, the primary purpose of a transferable trap program is to improve the overall economic efficiency of the lobster industry.

NMFS has not selected a preferred alternative to implement an ITT program in this DEIS. This DEIS evaluates the following four proposed ITT alternatives for public comment:

1. No Action ITT Alternative - No Federal trap transfer program would be implemented. State-level trap transfer programs, currently in Area 2, and the Outer Cape Area, would continue.
2. Commission ITT Alternative - Qualifiers in Area 2, Area 3, and the Outer Cape Area would be allowed to buy and sell traps subject to Area-specific conservation taxes and trap limits.
3. ITT for Area 3 Only - Trap transfers would be limited to Area 3 Federal permit holders only and would be administered by NMFS. All transfers would be in increments of 50 or more traps, and subject to a conservation tax.
4. Optional ITT Program - Qualifiers would not be obligated to take part in the transferability program, but could choose to do so, subject to a number of additional parameters designed to make the application of an ITT program more uniform across Area jurisdictions.

Public Meeting Dates, Times, and Locations

NMFS will hold six public meetings to receive comments on the potential biological, economic, and social impacts of proposed measures evaluated in this DEIS. The dates, times, and locations of the meetings are scheduled as follows:

1. Monday, May 24, 2010, 3 p.m.--Gulf of Maine Research Institute, 350 Commercial Street, Portland, ME.
2. Tuesday, May 25, 2010, 3 p.m.--Urban Forestry Center, 45 Elwyn Road, Portsmouth, NH.
3. Tuesday, June 1, 2010, 3 p.m.--Chatham Community Center, 702 Main Street, Chatham, MA.
4. Wednesday, June 2, 2010, 3 p.m--Narragansett Town Hall Assembly Room, 25 Fifth Street, Narragansett, RI.
5. Monday, June 7, 2010, 3 p.m.--Riverhead Town Board Room at Town Hall, 200 Howell Ave, Riverhead, NY.
6. Tuesday, June 8, 2010, 3 p.m.--Rutgers Cooperative Extension, Cape May Court House, 355 Court House/South Dennis Road (Route 657), Cape May Court House, NJ.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Bob Ross (see FOR FURTHER INFORMATION CONTACT) at least 5 days prior to the meeting date.

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

Dated: April 28, 2010.

James P. Burgess,

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

[FR Doc. 2010–10262 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV73

International Whaling Commission; 62nd Annual Meeting; Nominations

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

ACTION: Notice; request for nominations.

SUMMARY: This notice is a call for nominees for the U.S. Delegation to the June 2010 International Whaling Commission (IWC) annual meeting. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

DATES: The IWC is holding its 62nd annual meeting June 21–25, 2010, in Agadir, Morocco. All written nominations for the U.S. Delegation to the IWC annual meeting must be received by May 21st, 2010.

ADDRESSES: All nominations for the U.S. Delegation to the IWC annual meeting should be addressed to Ms. Monica Medina, U.S. Commissioner to the IWC, and sent via post to: Ryan Wulff, National Marine Fisheries Service, Office of International Affairs, 1315 East West Highway, SSMC3 Room 12620, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Ryan Wulff, 202–482–3689.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce is charged with the responsibility of discharging the domestic obligations of the United States under the International Convention for the Regulation of Whaling, 1946. The U.S. IWC Commissioner has responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other agencies. The non-federal representative(s) selected as a result of this nomination process is(are) responsible for providing input and recommendations to the U.S. IWC Commissioner representing the positions of non-governmental organizations. Generally, only one non-governmental position is selected for the U.S. Delegation.

Dated: April 27, 2010.

Rebecca Lent,

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. 2010–10240 Filed 4–30–10; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 5, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

1. Pending Decisional Matters

(a) Testing and Labeling to Product Certification—Notice of Proposed Rulemaking (NPR) and Testing Component Parts—Notice of Proposed Rulemaking (NPR); (b) CPSA 15(j) Rule for Drawstrings—Notice of Proposed Rulemaking (NPR); and (c) CPSA 15(j) Rule for Hairdryers—Notice of Proposed Rulemaking (NPR).

2. Infant Bath Seats—Final Rule—and Laboratory Accreditation

A live Web cast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html*.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 27, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–10375 Filed 4–29–10; 11:15 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, May 5, 2010; 2 p.m.–4 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: April 27, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–10377 Filed 4–29–10; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 10–08]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, DoD.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

SUPPLEMENTARY INFORMATION: The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 10–08 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

MAR 3 1 2010

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 10-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to India for defense articles and services estimated to cost $5.8 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

Joanne Farmer

Joanne L. Farmer
Acting Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 10-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: India

(ii) Total Estimated Value:

Major Defense Equipment*	$3.85 billion
Other	$1.95 billion
TOTAL	$5.80 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 10 Boeing C-17 GLOBEMASTER III aircraft, 45 F117-PW-100 engines (40 installed and 5 spare engines), 10 AN/ALE-47 Counter-Measures Dispensing Systems, 10 AN/AAR-47 Missile Warning Systems, spare and repairs parts, repair and return, warranty, pyrotechnics, flares, other explosives, aircraft ferry and refueling support, crew armor, mission planning system software, communication equipment and support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical, engineering, and logistics support services, and other related elements of logistics support.

(iv) Military Department: Air Force (SAC)

(v) Prior Related Cases, if any: None

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vii) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: APR 23 2010

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – C-17 GLOBEMASTER III Aircraft

The Government of India (GOI) requests a possible sale of 10 Boeing C-17 GLOBEMASTER III aircraft, 45 F117-PW-100 engines (40 installed and 5 spare engines), 10 AN/ALE-47 Counter-Measures Dispensing Systems, 10 AN/AAR-47Missile Warning Systems, spare and repairs parts, repair and return, warranty, pyrotechnics, flares, other explosives, aircraft ferry and refueling support, crew armor, mission planning system software, communication equipment and support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical, engineering, and logistics support services, and other related elements of logistics support. The estimated cost is $5.8 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to strengthen the U.S.-India strategic relationship and to improve the security of an important partner which continues to be an important force for political stability, peace, and economic progress in South Asia.

India intends to use these aircraft to replace its aging aircraft and associated supply chain with new and highly reliable aircraft. The acquisition of these C-17s will not present a new capability for the Indian Air Force, but will offer an increase in airlift capacity, reliability, and safety. The C-17 will increase the ability of the GOI to mobilize troops and equipment within the country and will enable India to provide significantly increased humanitarian assistance and disaster relief support within the region. Additionally, the C-17s will facilitate enhanced standardization with the United States. India will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in Long Beach, California, and Pratt & Whitney Military Engines in East Hartford, Connecticut. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. At this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the participation of up to 20 U.S. Government and 20 contractor representatives for annual program management and technical reviews in India or the U.S. for one week per review for approximately six years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 10-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Boeing C-17 GLOBEMASTER III military airlift aircraft is the newest, most flexible cargo aircraft to enter the U. S. Air Force fleet. The C-17 is capable of rapid strategic delivery of up to 170,900 pounds of personnel and equipment to main operating bases or to forward operating bases. The aircraft is also capable of short field landings with a full cargo load. Finally, the aircraft can perform tactical airlift and airdrop missions and can also transport litters and ambulatory patients during aeromedical evacuation when required. A fully integrated electronic cockpit and advanced cargo systems allow a crew of three to operate the aircraft on any type of mission.

2. The AN/ALE-47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing self-protection expendables (e.g. chaff, flares). The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. The system is internally mounted and may be operated as a stand-alone system or may be integrated with other on-board electronic warfare and avionics systems. The AN/ALE-47 uses threat data received over the aircraft interfaces to assess the threat situation and to determine a response. Expendable routines tailored to the immediate aircraft and threat environment may be dispensed using one of four operational modes. The hardware, technical data, and documentation to be provided are Unclassified and the software is classified Secret.

3. The AN/AAR-47 Missile Warning System is a small, lightweight, passive, electro-optic, threat warning device used to detect surface-to-air missiles fired at helicopters and low-flying fixed-wing aircraft and automatically provide countermeasures, as well as audio and visual-sector warning messages to the aircrew. The basic system consists of multiple Optical Sensor Converter (OSC) units, a Computer Processor (CP) and a Control Indicator (CI). The set of OSC units, normally four, is mounted on the aircraft exterior to provide omnidirectional protection. The OSC detects the rocket plume of missiles and sends appropriate signals to the CP for processing. The CP analyzes the data from each OSC and automatically deploys the appropriate countermeasures. The CP also contains comprehensive BIT circuitry. The CI displays the incoming direction of the threat, so that the pilot can take appropriate action. The hardware, technical data, and documentation to be provided are Unclassified, and the software is Secret.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 2010–10221 Filed 4–30–10; 8:45 am]
BILLING CODE 5001–06–c

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2009–OS–0105]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2010.

Title and OMB Number: DOD Loan Repayment Program (LRP); DD Form 2475, OMB Number 0704–0152.

Type of Request: Extension.

Number of Respondents: 17,500.

Responses Per Respondent: 1.

Annual Responses: 17,500.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 2,917 hours.

Needs and Uses: This information collection requirement is necessary because the military Services are authorized to repay student loans for individuals who meet certain criteria and who enlist for active military service or who enter Reserve service for a specific obligated period. Applicants who qualify for the program forward the DD Form 2475, "DOD Loan Repayment Program (LRP) Annual Application" to their Military Service Personnel Office for processing. The Military Service Personnel Office verifies the information and fills in the loan repayment date, address, and phone number. For the Reserve Components, the Military Service Personnel Office forwards the DD Form 2475 to the lending institution. For active-duty Service, the Service mails the form to the lending institution. The lending institution confirms the loan status and certification and mails the form back to the military Service Personnel Office.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10219 Filed 4–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DOD–2009–OS–0160]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2010.

Title and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Number 0704–0377.

Type of Request: Extension.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 hours.

Annual Burden Hours: 153,600 hours.

Needs and Uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The Industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions. Such data is essential to the Department of Defense for peacetime and wartime industrial base planning.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10222 Filed 4–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Strategic Environmental Research and Development Program (SERDP), Scientific Advisory Board

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463). The topic of the meeting on June 8–9, 2010, is to review new start research and development projects requesting Strategic Environmental Research and Development Program (SERDP) funds in excess of $1M. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

DATES: The meeting will be held on Tuesday, June 8, 2010, from 8 a.m. to 5:10 p.m. and on Wednesday, June 9, 2010, from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the SERDP Office Conference Center, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Bunger, SERDP Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2126.

Dated: April 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10223 Filed 4–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0050]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 2, 2010.

Title, Form, and OMB Number: DoD Statement of Intent, AMC Form 207; OMB Number 0701–0137.

Type of Request: Extension.

Number of Respondents: 15.

Responses per Respondent: 1.

Annual Responses: 15.

Average Burden per Response: 20 hours.

Annual Burden Hours: 300 hours.

Needs and Uses: The Department of Defense Commercial Airlift Division (HQ AMC/A34B) is responsible for the assessment of a commercial air carrier's ability to provide quality, safe, and reliable airlift to the Department of Defense. HQ AMC/A34B uses Air Mobility Command (AMC) Form 207 to acquire information needed to make a determination if the commercial carriers can support the Department of Defense. Information is evaluated and used in the approval process. Failure to respond renders the commercial air carrier ineligible for contracts to provide air carriers service to the Department of Defense.

Affected Public: Business or other for profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: April 28, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–10224 Filed 4–30–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (EIS) for the Central Palm Beach County Comprehensive Erosion Control Project in Palm Beach County, FL

AGENCY: U.S. Army Corps of Engineers, Jacksonville District, DoD.

ACTION: Notice of Intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps), Jacksonville District, intends to prepare a Draft Environmental Impact Statement (EIS) to address potential impacts associated with the construction of groins and segmented emergent breakwaters and placement of truck hauled sand along the coastline of the Towns of Palm Beach, South Palm Beach, Lantana, and Manalapan. The Corps will be evaluating a Department of the Army permit for the work under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. As part of the permit process, the Corps is evaluating the environmental effects associated with construction of the breakwaters and groins and the sand placement. The Palm Beach County Department of Environmental Resources Management (County) is the permit applicant seeking to implement the Proposed Action.

The primary Federal involvement associated with the Proposed Action is the discharge of fill within Waters of the United States and the construction of breakwaters and groins within Navigable Waters of the United States. Because of the extensive hardbottom resources immediately adjacent to the beach, the high recreational uses of the project area, the potential to cause down drift erosion, and other environmental impacts including potential adverse effects to Federally listed species, the Corps will prepare an EIS in compliance with the National Environmental Policy Act (NEPA) to render a final decision on the County's permit application. The Corps' decision will be to either issue or deny a Department of the Army permit for the Proposed Action. The Draft EIS is intended to be sufficient in scope to address Federal, State, and local requirements and environmental issues concerning the Proposed Action and permit reviews.

DATES: A public scoping workshop will be held on, or about, May 27, 2010 from 4:30 p.m. to 8 p.m. EST.

ADDRESSES: The public scoping workshop will be held at the Town of South Palm Beach Town Hall, 3577 South Ocean Boulevard, South Palm Beach, Florida. The workshop will give agencies and the public an opportunity to receive more information on the Proposed Action, alternatives, and to provide comments and suggestions on the scope of the EIS.

FOR FURTHER INFORMATION CONTACT: Questions about the Proposed Action and Draft EIS should be directed to Mr. Eric Reusch, Corps Regulatory Project Manager, by telephone at (561) 472–3529 or by e-mail at *Eric.G.Reusch@usace.army.mil.* Written comments should be addressed to the U.S. Army Corps of Engineers, Attn: Mr. Eric Reusch, 4400 PGA Boulevard, Suite 500, Palm Beach Gardens, Florida 34410 or by facsimile at (561) 626–6971.

SUPPLEMENTARY INFORMATION:

a. *Project Site and Background Information.* The study area comprises approximately 1.3 miles of shoreline and nearshore environment within four municipalities including the Town of Palm Beach, Town of South Palm Beach, Town of Lantana, and Town of Manalapan. The northern limit of the project is located at Florida Department

of Environmental Protection (FDEP) monument R132 (Town of Palm Beach) and extends south to the Ritz Carlton Hotel (R138+400′) located in Manalapan. The shoreline in this area has experienced long-term erosion, and waves have impacted the coastal armoring during major storms. Existing structural armoring in the project area includes rock revetments, concrete seawalls, steel sheet pile walls, a small wood retaining structure, a concrete ramp, and a concrete waffle revetment. Erosion currently threatens the structural integrity of several buildings within the project reach. The County has nourished the project area dune toes on several occasions and has planted native dune vegetation at several locations. Due to the narrow beach profile, much of this effort has been lost to erosion.

b. *Purpose and Need.* The overall project purpose is to stabilize and restore the shoreline adjacent to the Towns of Palm Beach, South Palm Beach, Lantana, and Manalapan.

c. *Proposed Action.* Palm Beach County proposes to construct 18 emergent breakwaters placed parallel to the shoreline at a depth of about −8 feet. The breakwaters would be located seaward of the nearshore hardbottom and landward of the offshore hardbottom. In addition, a series of four short groins are proposed for the Lantana Municipal Beach. Construction of these structures would help maintain sand on the beach by reducing the amount of wave energy reaching the shoreline. The project also proposes elevating the existing berm with the placement of truck-hauled sand in order to offset any potential impacts to downdrift beaches from capture of sand by the breakwaters and groins.

d. *Alternatives.* An evaluation of alternatives to the Proposed Action initially being considered includes a "no action" alternative, beach nourishment and dune restoration through filling activities, groins, segmented submerged breakwaters, upland coastal structural reinforcement/replacement, and combinations of these alternatives, as well as analyzing other reasonable alternatives developed through the project scoping process.

e. *Draft EIS Scoping Process.* The Corps is furnishing this notice to advise other Federal and State agencies, affected Federally recognized Tribes, and the public of our intentions. This notice announces the initiation of a 30-day scoping period which requests the public's involvement in the scoping and evaluation process of the DEIS. Stakeholders will be notified through advertisements, public notices and other means. All parties who express interest will be given an opportunity to participate in this process. The process allows the Corps to obtain suggestions and information on the scope of issues and an opportunity to provide reasonable alternatives to be included in the Draft EIS. The Corps invites comments from all interested parties to ensure that all significant issues are identified and the full range of issues related to the permit request are addressed. We will accept written comments until 30 days after the date of publication of this notice. (*See* **DATES** and **ADDRESSES.**)

f. *Significant Issues.* The DEIS will analyze the following: Aesthetics/visual quality, agricultural resources, air quality, biological resources, cultural resources, cumulative impacts, environmental justice, flood protection, geology/soils, growth inducement, land use/planning, noise/vibration, public health and safety, public services/utilities, recreation, socioeconomics, threatened and endangered species, traffic/circulation, water resources including wetlands, and other issues identified through scoping, public involvement, and interagency coordination. The Corps will conduct an environmental review of the Proposed Action in accordance with the requirements of NEPA, 1969 as amended, (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 Code of Federal Regulations, Section 1500 *et seq.*), Corps Procedures for Implementing NEPA (33 Code of Federal Regulations, Section 230 *et seq.*), NEPA Implementation Procedures for the Regulatory Program (33 Code of Federal Regulations, Section 325, Appendix B), and with other appropriate Federal laws and regulations, policies, and procedures of the Corps for compliance with those regulations. The Proposed Action, through the Corps permit review process, will require consultation under Section 7 of the Endangered Species Act and the Magnunson-Stevens Fishery Conservation and Management Act. Additionally, the proposed action would involve evaluation for compliance with the Section 404(b) (1) Guidelines of the Clean Water Act; Section 106 of the National Historic Preservation Act; Water Quality Certification pursuant to Section 401 of the Clean Water Act; certification of State lands, easements and right of ways; and determination of Coastal Zone Management Act consistency.

g. *Availability of the Draft EIS (DEIS).* The Corps currently expects the DEIS to be made available to the public on or about January 2011. A public meeting will be held during the public comment period for the DEIS. Written comments will be accepted at the meeting.

Donald W. Kinard,

Chief, Regulatory Division, Jacksonville District.

[FR Doc. 2010–10236 Filed 4–30–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Training and Information for Parents of Children with Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.328C and 84.328M.

Note: This notice invites applications for two separate competitions. For key dates, contact person information, and funding information regarding each competition, *see* the chart in the *Award Information* section of this notice.

Dates:

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (*see* sections 671, 672 and 681(d) of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA No.
Community Parent Resource Centers	84.328C
Parent Training and Information Centers	84.328M

Absolute Priorities: For FY 2010 and any subsequent year in which we make awards from the list of unfunded applicants from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only

applications that meet the absolute priority for that competition.

The priorities are:

Absolute Priority 1—Community Parent Resource Centers (84.328C)

Background

Almost 30 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home (*see* section 601(c)(5)(B) of IDEA).

This priority supports Community Parent Resource Centers (CPRCs) in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities in that community, with the training and information they need to enable them to participate cooperatively and effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

The following Web site provides further information on the work of previously funded centers: *http://www.taalliance.org.*

Priority

To be considered for funding under the CPRCs absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A plan to implement the activities described in the *Project Activities* section of this priority; and

(b) A budget for attendance at the following:

(1) A three-day National Technical Assistance for Parent Centers Conference in Washington, DC, during each year of the project period.

(2) A two-day Regional Technical Assistance for Parent Centers Conference, in the region in which the CPRC is located, during each year of the project period. Applicants should refer to *http://www.taalliance.org* for a list of regions.

Project Activities. To meet the requirements of this priority, the CPRC, at a minimum, must—

(a) Maintain a Web site that meets government or industry-recognized standards for accessibility;

(b) Provide training and information that meets the training and information needs of parents of children with disabilities within the proposed targeted community to be served by the CPRC, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities;

Note: For purposes of this priority, "targeted community to be served" refers to a geographically defined, local community whose members experience significant isolation from available sources of information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(c) Carry out the following activities required of parent training and information centers:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(2) Ensure that the training and information provided meet the needs of low-income parents and parents of limited English proficient children.

(3) Assist parents to—

(i) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(ii) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(iii) Participate in decisionmaking processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(iv) Obtain appropriate information about the range, type, and quality of—

(A) Options, programs, services, technologies, practices, and interventions based on scientifically based research, to the extent practicable; and

(B) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance and dissemination centers (*http://www.ed.gov/parents/needs/speced/resources.html*), and communities of practice (*http://www.tacommunities.org*);

(v) Understand the requirements of IDEA related to the provision of education and early intervention services to children with disabilities;

(vi) Participate in activities at the school level that benefit their children; and

(vii) Participate in school reform activities.

(4) In States where the State elects to contract with the CPRCs, contract with the State educational agencies (SEAs) to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(5) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(6) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law).

(7) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA.

(8) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA;

(d) Establish cooperative partnerships with any Parent Training and Information Centers (PTIs) and any other CPRCs funded in the State under sections 671 and 672 of IDEA, respectively;

(e) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support;

(f) Be familiar with the provision of special education, related services, and early intervention services in the CPRC's targeted community to be served to help ensure that children with disabilities are receiving appropriate services;

(g) Annually report to the Department on—

(1) The number and demographics of parents to whom the CPRC provided information and training in the most recently concluded fiscal year, including additional information regarding the parents' unique needs and

the levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively;

(h) Respond to requests from the OSEP-funded National and Regional Parent Technical Assistance Centers (PTACs), and use the technical assistance services of the National and Regional PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. Regional PTACs are charged with assisting parent centers with administrative and programmatic issues;

(i) In collaboration with OSEP and the National PTAC participate in an annual collection of program data for the PTIs and CPRCs funded under sections 671 and 672 of IDEA, respectively; and

(j) Maintain ongoing communication with the OSEP Project Officer through phone conversations and e-mail communication.

In addition, the CPRC's board of directors must meet not less than once in each calendar quarter to review the activities for which the award was made and submit to the Secretary a written review of the CPRC's activities conducted during the preceding fiscal year.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following two priorities. Under 34 CFR 75.105(c)(2)(i), we award 5 points to an application that meets Competitive Preference Priority 1 and 5 points to an application that meets Competitive Preference Priority 2.

Note: The 10 points an applicant can earn under these competitive preference priorities are in addition to those points awarded under the selection criteria for this competition (*see Selection Criteria* in section V in this notice). That is, an applicant meeting the competitive preference priorities could earn a maximum total of 110 points.

These priorities are:

Competitive Preference Priority 1—Empowerment Zones, Enterprise Communities, or Renewal Communities

We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities, or Renewal Communities that are designated within the areas served by the center. (The following Web site provides a list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities: *http://egis.hud.gov/egis/cpd/rcezec/ezec_open.htm.*)

To meet this priority, an applicant must indicate that it will—

(1) Either design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities; and

(2) Contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities as appropriate, and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

Competitive Preference Priority 2—Novice Applicants

We will award an additional five points to an application from a novice applicant. This priority is from 34 CFR 75.225. The term "novice applicant" means any applicant for a grant from the U.S. Department of Education that—

(1) Has never received a grant or subgrant under the program from which it seeks funding;

(2) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the program from which it seeks funding; and

(3) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this program (Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers). For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, all group members must meet the requirements described in this priority to qualify as a novice applicant.

Absolute Priority 2—Parent Training and Information Centers (84.328M)

Background

Almost 30 years of research and experience have demonstrated that the education of children with disabilities can be made more effective by strengthening the role and responsibility of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home (*see* section 601(c)(5)(B) of IDEA).

This priority supports Parent Training and Information Centers (PTIs) in the areas to be served by the centers that will provide parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities, with the training and information they need to enable them to participate cooperatively and effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

The following Web site provides more information on the work of previously funded centers: *http://www.taalliance.org.*

Priority

To be considered for funding under the PTIs absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A logic model that depicts, at a minimum, the goals, activities, outputs, and outcomes of the proposed project. A logic model communicates how a project will achieve its outcomes and provides a framework for both the formative and summative evaluations of the project;

Note: The following Web site provides more information on logic models and lists multiple online resources: *http://www.cdc.gov/eval/resources.htm.*

(b) A plan to implement the activities described in the *Project Activities* section of this priority;

(c) A plan, linked to the proposed project's logic model, for a formative evaluation of the proposed project's activities. The plan must describe how the formative evaluation will use clear performance objectives to ensure continuous improvement in the operation of the proposed project, including objective measures of progress in implementing the project and ensuring the quality of products and services;

(d) A budget for attendance at the following:

(1) A three-day National Technical Assistance for Parent Centers Conference in Washington, DC during each year of the project period.

(2) A two-day Regional Technical Assistance for Parent Centers Conference, in the region in which the PTI is located, during each year of the project period. Applicants should refer to *http://www.taalliance.org* for a list of regions; and

(e) A description specifying the special efforts the PTI will make to:

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) Work with community-based organizations, including those that work with low-income parents and parents of limited English proficient children.

Project Activities. To meet the requirements of this priority, the PTI, at a minimum, must—

(a) Maintain a Web site that meets government or industry-recognized standards for accessibility;

(b) Provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the PTI, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities;

(c) Serve the parents of infants, toddlers, and children from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA;

(d) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children;

(e) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decisionmaking processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(4) Obtain appropriate information about the range, type and quality of—

(i) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(ii) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance and dissemination centers (*http://www.ed.gov/parents/needs/speced/resources.html*), and communities of practice (*http://www.tacommunities.org*);

(5) Understand the requirements of IDEA related to the provision of education and early intervention services to children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities;

(f) In States where the State elects to contract with the PTIs, contract with the State educational agencies (SEAs) to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process;

(g) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA;

(h) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law);

(i) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA;

(j) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA;

(k) Establish cooperative partnerships with any CPRCs and any other PTIs funded in the State under sections 672 and 671 of IDEA, respectively;

(l) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA;

(m) Annually report to the Department on—

(1) The number and demographics of parents to whom the PTI provided information and training in the most recently concluded fiscal year, including additional information regarding the parents' unique needs and the levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively;

(n) Respond to requests from the OSEP-funded National Parent Technical Assistance Center and Regional Parent Technical Assistance Centers (PTACs), and use the technical assistance services of the National and Regional PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. Regional PTACs are charged with assisting parent centers with administrative and programmatic issues;

(o) In collaboration with OSEP and the National PTAC, participate in an annual collection of program data for the PTIs and CPRCs funded under sections 671 and 672 of IDEA, respectively; and

(p) Maintain ongoing communication with the OSEP Project Officer through phone conversations and e-mail communication.

In addition, the PTI's board of directors must meet not less than once in each calendar quarter to review the activities for which the award was made and submit to the Secretary a written review of the PTI's activities conducted during the preceding fiscal year.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1472, 1473 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

II. Award Information

Type of Awards: Discretionary grants.

Estimated Available Funds: $4,805,022. Please refer to the

"Estimated Available Funds" column of the chart in this section for the estimated dollar amounts for individual competitions. Information concerning funding amounts for individual States and target populations for the 84.328M competition is provided in the "Maximum Award" column of the chart in this section of this notice.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT TRAINING AND INFORMATION FOR PARENTS OF CHILDREN WITH DISABILITIES PROGRAM APPLICATION NOTICE FOR FISCAL YEAR 2010

CFDA No. and name	Applications available	Deadline for transmittal of applications	Deadline for intergovernmental review	Estimated available funds (*See* Note 2)	Estimated average size of awards (*See* Note 2)	Maximum award (*See* Note 1)	Estimated number of awards (*See* Note 2)	Project period	Page limit	Contact person
84.328C Community Parent Resource Centers.	May 3, 2010.	June 17, 2010.	August 16, 2010.	$1,000,000	$100,000	$100,000	10	Up to 60 mos	50	Carmen Sanchez, (202) 245–6595, PCP–4055.
84.328M Parent Training and Information Centers.	May 3, 2010.	June 17, 2010.	August 16, 2010.	3,805,022	253,668	.....	17	Up to 48 mos. (*See* Note 3).	70	Marsha Goldberg, (202) 245–6468, PCP–4052.
District of Columbia	.....	.....	.....	.....	.....	182,061				
Hawaii	.....	.....	.....	.....	.....	205,444				
Idaho	.....	.....	.....	.....	.....	203,592				
Louisiana	.....	.....	.....	.....	.....	328,626				
Mississippi	.....	.....	.....	.....	.....	266,988				
New Hampshire	.....	.....	.....	.....	.....	203,415				
North Carolina	.....	.....	.....	.....	.....	538,997				
Oklahoma	.....	.....	.....	.....	.....	249,215				
Pennsylvania										
Region 1	.....	.....	.....	.....	.....	393,285				
Region 2	.....	.....	.....	.....	.....	262,172				
Rhode Island	.....	.....	.....	.....	.....	204,196				
Tennessee	.....	.....	.....	.....	.....	357,103				
Virgin Islands	.....	.....	.....	.....	.....	129,515				
West Virginia	.....	.....	.....	.....	.....	205,413				
Outlying Areas										
American Samoa.	.....	.....	.....	.....	.....	25,000				
Guam	.....	.....	.....	.....	.....	25,000				
Commonwealth of the Northern Marianas.	.....	.....	.....	.....	.....	25,000				

Note 1: We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 2: The Department is not bound by any estimates in this notice.

Note 3: For the *Parent Training and Information Centers,* CFDA Number 84.328M competition:

Project Period: In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards to PTIs in four-year cycles for each State. In FY 2010, applications for 4-year awards will be accepted for the following States: Hawaii, Idaho, Louisiana, Mississippi, New Hampshire, North Carolina, Oklahoma, Pennsylvania (Region 1 and Region 2), Rhode Island, Tennessee, Virgin Islands, West Virginia, and the District of Columbia. Awards also may be made to eligible applicants in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. These projects will be funded for a period up to 48 months.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations established within Pennsylvania and has identified corresponding maximum award amounts for each region. Pennsylvania applicants must complete a separate application for each region.

The Assistant Secretary took into consideration current funding levels, population distribution, poverty rates, and low-density enrollment when determining the award amounts for grants under this competition. In the following States, one award may be made for up to the amounts listed in the chart to a qualified applicant for a PTI Center to serve the entire State or District of Columbia.

District of Columbia	$182,061
Hawaii	205,444
Idaho	203,592
Louisiana	328,626
Mississippi	266,988
New Hampshire	203,415
North Carolina	538,997
Oklahoma	249,215
Rhode Island	204,196
Tennessee	357,103
Virgin Islands	129,515
West Virginia	205,413

In the following State one award up to the amount listed will be made to a qualified applicant for a PTI Center to serve each identified region. A list of the counties that are included in each region also follows.

Pennsylvania:

Region 1 (Adams, Berks, Bucks, Carbon, Chester, Cumberland, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Perry, Philadelphia, Pike, Schuylkill, Susquehanna, Wayne, Wyoming, and York Counties) $393,285

Region 2 (Allegheny, Armstrong, Beaver, Bedford, Blair, Bradford, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Columbia, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Juniata, Lawrence, Lycoming, McKean, Mercer, Mifflin, Montour, Northumberland, Potter, Snyder, Somerset, Sullivan, Tioga, Union, Venango, Warren, Washington, and Westmoreland Counties) $262,172

One award up to the amount listed may be made to a qualified applicant from the outlying areas as follows:

American Samoa	$25,000
Guam	25,000
Commonwealth of the Northern Mariana Islands	25,000

Consistent with 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

III. Eligibility Information

1. Eligible Applicants

Absolute Priority	Eligible Applicants
Community Parent Resource Centers (84.328C)	Local parent organizations.
Parent Training and Information Centers (84.328M)	Parent organizations.

Note: Under section 672(a)(2) of IDEA, a "local parent organization" is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that—

(a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served.

(b) Has as its mission serving parents of children with disabilities from that community who (1) are ages birth through 26, and (2) have the full range of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a "parent organization" as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention;

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (*see* section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA Number 84.328C or 84.328M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than the number of pages listed under "Page Limit" for that competition in the chart under II. *Award Information,* using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under each competition may be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site, or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other

requirements and limitations in this notice.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for each competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under each competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

If you choose to submit your application to us electronically, you must use e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- Your participation in e-Application is voluntary.
- You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for these competitions after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for a competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application.

Extensions referred to in this section apply only to the unavailability of e-Application. If e-Application is available, and, for any reason, you are unable to submit your application electronically or you do not receive an automatic acknowledgment of your submission, you may submit your application in paper format by mail or hand delivery in accordance with the instructions in this notice.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.328C or 84.328M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.328C or 84.328M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package for each competition announced in this notice.

2. *Review and Selection Process:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Training and Information for Parents of Children with Disabilities program. The measures focus on the extent to which projects provide high-quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures in annual reports submitted to the Department.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: *See* the chart in the II. *Award Information* section in this notice for the name, room number, and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2550.

If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 26, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–10198 Filed 4–30–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Attendance at the Arkansas Public Service Commission Technical Conference

April 26, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members and staff may attend the Arkansas Public Service Commission's technical conference in Docket No. 08–136–U scheduled for 9 a.m.–12 noon on Thursday, June 3, 2010, at the Little Rock Regional Chamber of Commerce Building, 1 Chamber Plaza, Little Rock, Arkansas 72201. More information can be found on the Arkansas Public Service Commission's Web site at *http://www.apscservices.info/pdf/08/08–136-u_130_1.pdf.*

Their attendance is part of the Commission's ongoing outreach efforts.

The discussions may address matters at issue in the following proceedings:

Docket No. EL09–40, *Southwest Power Pool, Inc.*
Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–923, *Xcel Energy Services, Inc.*
Docket No. ER08–1307, *Southwest Power Pool, Inc.*
Docket No. ER08–1308, *Southwest Power Pool, Inc.*
Docket No. ER08–1357, *Southwest Power Pool, Inc.*
Docket No. ER08–1358, *Southwest Power Pool, Inc.*
Docket No. ER08–1359, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–35, *Tallgrass Transmission LLC*
Docket No. ER09–36, *Prairie Wind Transmission LLC*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER09–1050, *Southwest Power Pool, Inc.*
Docket No. ER09–1254, *Southwest Power Pool, Inc.*
Docket No. ER09–1255, *Southwest Power Pool, Inc.*
Docket No. ER09–1397, *Southwest Power Pool, Inc.*
Docket No. ER09–1716, *Southwest Power Pool, Inc.*
Docket No. ER10–352, *Southwest Power Pool, Inc.*
Docket No. OA08–5, *Southwest Power Pool, Inc.*
Docket No. OA08–60, *Southwest Power Pool, Inc.*
Docket No. OA08–61, *Southwest Power Pool, Inc.*
Docket No. OA08–104, *Southwest Power Pool, Inc.*
Docket No. ER10–664, *Southwest Power Pool, Inc.*
Docket No. ER10–678, *Southwest Power Pool, Inc.*
Docket No. ER10–680, *Southwest Power Pool, Inc.*
Docket No. ER10–681, *Southwest Power Pool, Inc.*
Docket No. ER10–692, *Southwest Power Pool, Inc.*
Docket No. ER10–693, *Southwest Power Pool, Inc.*
Docket No. ER10–694, *Southwest Power Pool, Inc.*
Docket No. ER10–696, *Southwest Power Pool, Inc.*
Docket No. ER10–697, *Southwest Power Pool, Inc.*
Docket No. ER10–698, *Southwest Power Pool, Inc.*
Docket No. ER10–700, *Southwest Power Pool, Inc.*
Docket No. ER10–738, *Southwest Power Pool, Inc.*
Docket No. ER10–739, *Southwest Power Pool, Inc.*
Docket No. ER10–754, *Southwest Power Pool, Inc.*
Docket No. ER10–760, *Southwest Power Pool, Inc.*
Docket No. ER10–761, *Southwest Power Pool, Inc.*
Docket No. ER10–762, *Southwest Power Pool, Inc.*
Docket No. ER10–773, *Southwest Power Pool, Inc.*
Docket No. ER10–795, *Southwest Power Pool, Inc.*
Docket No. ER10–798, *Southwest Power Pool, Inc.*
Docket No. ER10–813, *Southwest Power Pool, Inc.*
Docket No. ER10–824, *Southwest Power Pool, Inc.*
Docket No. ER10–830, *Southwest Power Pool, Inc.*
Docket No. ER10–831, *Southwest Power Pool, Inc.*
Docket No. ER10–833, *Southwest Power Pool, Inc.*
Docket No. ER10–888, *Southwest Power Pool, Inc.*
Docket No. ER10–897, *Southwest Power Pool, Inc.*
Docket No. ER10–925, *Southwest Power Pool, Inc.*
Docket No. ER10–941, *Southwest Power Pool, Inc.*
Docket No. ER10–1069, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10216 Filed 4–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Southwest Power Pool ICT Stakeholder Policy Committee Meeting and the Entergy Regional State Committee Meeting

April 26, 2010.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

May 12, 2010 (8 a.m.–12 p.m.), Hilton Baton Rouge Capitol Center, 201 Lafayette Street, Baton Rouge, LA 70801, 225–344–5866.

Entergy Regional State Committee Meeting

May 12, 2010 (1 p.m.–5 p.m.)

May 13, 2010 (8 a.m.–12 p.m.), Hilton Baton Rouge Capitol Center, 201 Lafayette Street, Baton Rouge, LA 70801, 225–344–5866.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32 ..... Entergy Services, Inc.
Docket No. OA08–59 ..... Entergy Services, Inc.
Docket No. EL00–66 ..... *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL01–88 ..... *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL05–15 ..... *Arkansas Electric Cooperative Corp.* v. *Entergy Arkansas, Inc.*
Docket No. EL07–52 ..... *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–51 ..... *Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–60 ..... *Ameren Services Co.* v. *Entergy Services, Inc.*

Docket No. EL09–43	*Arkansas Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–61	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–78	*South Mississippi Electric Power Association* v. *Entergy Services, Inc.*
Docket No. EL10–55	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER08–1057	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–877	Entergy Services, Inc.
Docket No. ER09–882	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.
Docket No. ER10–879	Entergy Services, Inc.
Docket No. ER10–984	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10217 Filed 4–30–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–62–000]

Alta Wind I, LLC; Alta Wind II, LLC; Alta Wind III, LLC; Alta Wind IV, LLC; Alta Wind V, LLC; Alta Wind VI, LLC; Alta Wind VII, LLC; Alta Wind VIII, LLC; Alta Windpower Development, LLC; TGP Development Company, LLC; Notice of Petition for Declaratory Order

April 26, 2010.

Take notice that on April 23, 2010, pursuant to section 207 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 285.207 (2009), Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, Alta Wind VI, LLC, Alta Wind VII, LLC, Alta Wind VIII, LLC, Alta Windpower Development, LLC, and TGP Development Company, LLC (Petitioners) filed jointly a petition for declaratory order requesting the Commission to confirm their firm priority transmission rights to the capacity of three 230 kV radial generator tie-lines to interconnect Petitioners' full planned wind and solar generation capacity to the integrated transmission system.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 24, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–10218 Filed 4–30–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0415; FRL–9144–3; EPA ICR Number 1072.09; OMB Control Number 2060–0081]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Lead Acid Battery Manufacturing (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 June 2, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0415, 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: John Schaefer, Office of Air Quality Planning

and Standards, Sector Policies and Programs Division (D243–05), Measurement Policy Group, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0296; fax number: (919) 541–3207; e-mail address: *schaefer.john@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 July 8, 2009 (74 FR 32581), 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–2009–0415, which is available for public viewing online at *http://www.regulations.gov,* 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 Lead Acid Battery Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1072.09, OMB Control Number 2060–0081.

ICR Status: This ICR is scheduled to expire on June 30, 2010. 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 Lead Acid Battery Manufacturing (40 CFR part 60, subpart KK) were proposed on January 14, 1980, and promulgated on April 16, 1982.

Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and 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 62 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 lead acid battery manufacturing facilities.

Estimated Number of Respondents: 52.

Frequency of Response: Initially, occasionally, and semiannually.

Estimated Total Annual Hour Burden: 4,053.

Estimated Total Annual Cost: $395,346, which includes $383,346 in labor costs, $0 in capital/startup costs, and $12,000 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the number of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: April 27, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–10232 Filed 4–30–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R04–OW–2010–0211; FRL–9143–9]

Public Water System Supervision Program Revision for the State of Alabama

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Alabama is revising its approved Public Water System Supervision Program. Alabama has adopted the following rules: Arsenic Rule, Lead and Copper Minor Revisions Rule, and Radionuclides Rule. EPA has determined that Alabama's rules are no less stringent than the corresponding Federal regulations. Therefore, EPA is tentatively approving this revision to the State of Alabama's Public Water System Supervision Program.

DATES: Any interested person may request a public hearing. A request for a public hearing must be submitted by June 2, 2010, to the Regional Administrator at the EPA Region 4 address shown below. The Regional Administrator may deny frivolous or insubstantial requests for a hearing. However, if a substantial request for a public hearing is made by June 2, 2010, a public hearing will be held. If EPA Region 4 does not receive a timely and appropriate request for a hearing and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective on June 2, 2010. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the

request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Alabama Department of Environmental Management, Drinking Water Branch, 1400 Coliseum Boulevard, Montgomery, Alabama 36130; and the U.S. Environmental Protection Agency, Region 4, Safe Drinking Water Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Tom Plouff, P.E., EPA Region 4, Safe Drinking Water Branch, at the address given above, by telephone at (404) 562–9476, or at *plouff.tom@epa.gov.*

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142.

Dated: April 20, 2010.

J. Scott Gordon,

Acting Regional Administrator, Region 4.

[FR Doc. 2010–10173 Filed 4–30–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Investigating the Causes of Post Donation Information (PDI): Errors in the Donor Screening Process

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 23, 2010, Volume 75, No. 35, pages 8080–8081 and allowed 60 days for public comment. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection: Title: Investigating the causes of post donation information (PDI): Errors in the donor screening process. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* Blood centers are required to use a health history screening questionnaire to obtain eligibility information for the protection of the donor and recipient prior to blood donation. However, the health history process is known to be error-prone and the reasons for those errors are largely unknown and untested. Donors often fail to report a risk that would have resulted in deferral. This deferral risk may be disclosed at a subsequent donation and is classified as Post Donation Information (PDI). While this deferral risk may be at the next donation event, many examples of PDI are not disclosed nor discovered until several intervening donation events have occurred. The reasons why donors fail to disclose a deferrable history at the time of one donation but subsequently disclose this information at a later time are unidentified. This protocol is designed to ascertain why PDI error events occur. It will be the first study of any kind to address the issue of PDI errors in any systematic fashion. By conducting interviews with donors involved in PDI errors, we will gain important qualitative knowledge about this problem. Information gathered from these interviews will not only elucidate the issue of PDI but will provide insight into donor understanding of the screening process and their feelings about the process and blood donation in general.

The main objectives of the study are:

1. To explore reasons behind errors in the donor screening process when donors initially fail to disclose an accurate and complete health history.

2. To explore PDI donors' knowledge, attitudes, behaviors and beliefs (KABB) about the health history questionnaire and their experience with the screening process and the center.

3. To compare KABB in PDI donors to deferred (but not PDI) donors and accepted donors.

The study sample will consist of three groups:

1. Donors with a PDI: all identified donors of interest with an FDA reportable donor suitability error classified as PDI at the REDS–II centers.

2. Deferred donors: appropriately deferred (but not PDI deferred donors) at the REDS–II centers.

3. Accepted Donors: appropriately accepted for donation at the REDS–II centers.

Telephone interviews will be conducted with consented donors to collect information regarding their knowledge, attitudes, behaviors and beliefs about the donor health history process. Even though the interviews with the donors will be individual, we would like to form groups of similar PDI and deferred donors for analysis purposes.

The five groups of interest include PDI occurrences or deferrals that are due to:

- Travel (malaria, vCJD).
- Medical (history of diseases including jaundice/hepatitis, surgery and medications needed to treat disease including Tegison, Proscar and Accutane).
- Blood/Disease Exposure—(tattoo, piercings, accidental needle stick).
- High Risk Behavior—Sexual (MSM, sex with IV drug user or test-positive individual).
- High Risk Behavior—Non-Sexual (IV drug use, non-sexual exposure to Hepatitis C or Hepatitis B).

All interviews will be digitally-recorded and the recordings uploaded onto computers as dss files; these files will be transcribed and then coupled to the interviewer notes to form an analytic package for the data analysts. Once the interview is conducted successfully, each study donor will be mailed a check of $25 as an incentive for participating in the study.

The cognitive testing of the interview guide will be conducted at the Hoxworth Blood Center. For this purpose, the blood center staff will identify 2 PDI and 2 deferred donors from the five broad categories of interest. They will also contact 2 accepted donors for study consent and interview. These donors will be approached and consented by following the same procedures that will be used for the actual study.

The data from the semi-structured interviews will be analyzed in two ways. The close-ended responses will be analyzed quantitatively. This will likely take the form of 3-way cross-tabulations of frequency distributions in responses to key questions. The open-ended responses will be analyzed as qualitative data. All analytic steps and assumptions that led up to the conclusions, including competing interpretations of the data, will be fully discussed in the final report.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Adult blood donors. The annual reporting burden is a follows: *Estimated Number of Respondents:* 408; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* 0.08 for the initial phone call and 0.5 for responding to the

actual interview; and *Estimated Total Annual Burden Hours Requested:* 83.64.The annualized cost to respondents is estimated at: $1505.52 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Table 1: Estimate of Requested Burden Hours and Dollar Value of Burden Hours

TABLE A.12–1 ESTIMATES OF HOUR BURDEN

Type of respondents	No. of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Donors initially contacted	408	1	.08	32.6
PDI Donors	*60	1	0.5	30
Deferred Donors	*30	1	0.5	15
Accepted Donors	*12	1	0.5	6
Total	408			83.64

*These respondents are a subgroup of total 408 donors who will be initially contacted to participate in the study.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Suite 361, 6700 Rockledge Drive, Bethesda, MD 20892, or call non-toll-free number 301–435–0075, or e-mail your request, including your address to *nemog@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: April 26, 2010.

George Nemo,

Project Officer, NHLBI, National Institutes of Health.

[FR Doc. 2010–10283 Filed 4–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Standardizing Antibiotic Use in Long-Term Care Settings SAUL) Study." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by July 2, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Standardizing Antibiotic Use in Long-Term Care Settings (SAUL)

Study Inappropriate antibiotic prescribing practices by primary care clinicians caring for residents in long-term care (LTC) communities is becoming a major public health concern as it is a risk factor for morbidity and mortality among LTC residents. Antibiotics are among the most commonly prescribed pharmaceuticals in LTC settings, yet reports indicate that a high proportion of antibiotic prescriptions are inappropriate. The adverse consequences of inappropriate prescribing practices are serious and include drug reactions/interactions, secondary complications, and the emergence of multi-drug resistant organisms.

In an effort to reduce antibiotic overprescribing, Loeb and colleagues developed minimum criteria for the initiation of antibiotics in LTC setting (Loeb, M., *et al.* 2001). The criteria have been tested in several studies, but their implementation and tests of validity have been limited. In particular, though Loeb and colleagues developed distinct minimum criteria for several types of infection (skin and soft-tissue, respiratory, urinary tract, and unexplained fever), a rigorous evaluation has been conducted only for urinary tract infections.

Twelve nursing homes (NH) will participate in this project; six NHs will be recruited to serve as treatment sites and six to serve as control sites. Once a nursing home community has been selected and randomly assigned to the treatment or control group, a facility recruitment letter will be sent to the facility Administrator. The letter will include a description of the study and inform the Administrator that the

project manager will be calling in the near future to further discuss the project and answers any questions that he/she might have regarding the program.

The objectives of the study are to:

1. Implement a quality improvement (QI) intervention program to optimize antibiotic prescribing practices;

2. Evaluate the effect of the QI intervention on antibiotic prescribing practices including validation of the Loeb minimum criteria; and

3. Develop and execute a dissemination plan to ensure wide dissemination of the findings and recommendations for improving antibiotic prescribing behaviors in LTC settings.

To address the first study objective, the research team will conduct a six-month QI intervention program in the six treatment sites to improve antibiotic prescribing practices. The intervention incorporates investigative evidence including the Loeb algorithms. QI program procedures are documented in the draft intervention manual, including the Loeb algorithms. The protocol recognizes that not all factors will need attention in all instances, as (for example) some NHs may already be vigilant to advance directive completion. The QI program is intended for facilities to self-implement and monitor with guidance provided from the research team upon request.

In order to validate the Loeb Criteria and to test the efficacy of the QI intervention, recruited facilities will be matched in pairs with respect to bedsize, profit status and location (urban, suburban, rural) and within each pair, one facility will be randomized to each study arm (treatment and control).

This study is being conducted by AHRQ through its contractors, Abt Associates and the University of North Carolina, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

The following data collection activities and trainings will be implemented to achieve the first two objectives of this project:

(1) Pre-implementation semi-structured interviews will be conducted separately with physicians, facility administrators and with the director of nursing (DON) or nurse educators (see Attachment D for each type of pre-implementation interview) from the six treatment sites. The purpose of these interviews is to generate ideas on how best to implement the new procedures and what approaches work best across facilities. Related risk factors and remedial strategies also will be identified. These interviews will take place during the three month baseline period and feedback will be used to modify the intervention materials as appropriate.

(2) Administrator interviews will be conducted at the time of facility enrollment to collect facility-level data in order to describe the sample and to explore linkages to prescribing practices. General facility-level descriptors including size (number of beds), profit status, location (urban, suburban, rural), and staffing levels (number of full and part-time registered nurses, licensed practical nurses, and nurse aides) will be collected. Additionally, simple summary (facility-level) information regarding resident demographics will be collected (e.g. age, gender, race/ethnicity, proportion long-stay vs. post-acute/rehab). Facility data will be collected through interviews with the Administrator at all twelve facilities.

(3) Train-the-trainer training will be conducted during the baseline period (prior to the implementation of the intervention). Research staff will present information about the Antibiotic Use QI and Monitoring Program at one, two-hour in-person meeting held at each treatment site. The research team will work with physicians (the physician champion at each facility; a physician champion is an expert that provides education, champions a cause or product, or gives support to staff around the diffusion and implementation of clinical practice guidelines, protocols, or research evidence), administrators, directors of nursing and nurse educators using a train-the-trainer model to offer guidance on educating intervention site staff on how to implement the Antibiotic Use QI Program that is based on the Loeb criteria. Intervention and training materials include those products and strategies used in other successful projects (e.g., written Loeb algorithms).

(4) Train-the-nurses training will be conducted by the nurse educator at each of the six treatment sites following the train-the-trainer training. The nurse educator will introduce the facility nurses to the Antibiotic Use Ql and Monitoring Program materials and train them on the use of the Loeb minimum criteria. This training will be offered two times at regularly scheduled in-service meetings; however each nurse will be required to attend only one session.

(5) Train-the-physicians training will be conducted by the physician champion at each of the six treatment sites following the train-the-trainer training. The project team will be present to address any questions regarding the study. The physician champion will introduce the facility physicians to the Antibiotic Use QI and Monitoring Program materials and discuss with them the use of the Loeb minimum criteria. An average of five physicians at each facility will be individually contacted by the physician champion to discuss the use of the Loeb criteria. Each physician will have received a letter with the study description and the Loeb criteria prior to contact by the physician champion.

(6) Medical record reviews (MMR) will be conducted by research staff to collect primary outcome data to determine antibiotic prescribing. Primary outcomes will be obtained by monthly chart review for a period of nine months: three months preceding the initiation of the QI intervention (for which the charts of all residents will be abstracted), and each month for six months following the inception of the program (for which the charts of all residents will be abstracted, regardless of whether or not they are discharged from the setting or die) at all 12 facilities (treatment and control) by trained research staff from current (not archival) records. Since this data collection will not impose a burden on the facility staff OMB clearance is not required.

(7) Final semi-structured interviews with QI team members including physicians, facility administrators, and other key facility staff will be conducted at the completion of the intervention to determine their perceptions regarding facilitators and barriers to successful program implementation.

(8) Nurse survey will be administered to nurses in all twelve facilities in the month prior to program implementation, and again in the final month of implementation. The purpose of this survey is to collect secondary outcome data regarding the antibiotic prescribing decision-making process and to collect basic information about each nurse, such as their title, type of degree and years worked in a LTC facility.

(9) Physician survey will be administered in all twelve facilities in the month prior to program implementation, and again in the final month of implementation. Similar to the nurse survey, the purpose of this survey is to collect secondary outcome data regarding the antibiotic prescribing

decision-making process and to collect basic information about each physician.

In response to the third study objective, AHRQ will draw upon its extensive experience of successfully disseminating information through varying strategies. To assist in designing a plan that has "real world" impact, AHRQ's Dissemination Planning Tool will be utilized.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. Pre-implementation semi-structured interviews will be conducted with 3 staff members from each of the 6 intervention sites and will last about 1 hour. The administrator interviews will be completed with one administrator from each of the 12 participating NHs and will require 15 minutes. Train-the-trainer training will include 4 persons from each of the 6 intervention sites and will last 2 hours. Train-the-nurses training will be conducted with 24 nurses from each of the intervention sites; the number of responses per NH is 26 since the nurse trainer is an employee of the NH and will conduct the training twice, with about 12 nurses in each training. The nurse training will last about 1 hour. Train-the-physician training will be conducted with 5 physicians from each of the 6 intervention sites; the number of responses per NH is 6 since the physician trainer is affiliated with the NH. The physician training will last about 30 minutes.

Final semi-structured interviews will include 4 QI team members from each of the 6 intervention sites, at the completion of the intervention, and will last one hour. The nurse survey will be administered twice to 24 nurses from each of the 12 participating NHs and will take about 15 minutes to complete. The physician survey will be administered twice to 5 physicians from each of the 12 facilities and requires 15 minutes to complete. The total annualized burden hours are estimated to be 441 hours.

Exhibit 2 shows the estimated annual cost burden to the respondent, based on their time to participate in this research. The annual cost burden is estimated to be $25,204.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of nursing homes	Number of responses per nursing home	Hours per response	Total burden hours
Pre-implementation semi-structured interviews	6	3	1	18
Administrator Interviews	12	1	15/60	3
Train-the-trainer training	6	4	2	48
Train-the-nurses training	6	26	1	156
Train-the-physicians training	6	6	30/60	18
Final Semi-Structured Interview	6	4	1	24
Nurse survey	12	48	15/60	144
Physician survey	12	10	15/60	30
Total	66	n/a	n/a	441

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of nursing homes	Total burden hours	Average hourly wage rate *	Total cost burden
Pre-implementation semi-structured interviews	6	18	** 51.68	$930
Administrator Interviews	12	3	*** 46.59	140
Train-the-trainer training	6	48	31.31	1,503
Train-the-nurses training	6	156	77.64	12,112
Train-the-physicians training	6	18	31.31	564
Final Semi-Structured Interview	6	24	77.64	1,863
Nurse survey	12	144	*** 46.59	6,709
Physician survey	12	30	46.10	1,383
Total	66	441	n/a	25,204

* Based upon the mean of the average wages, National Occupational Employment and Wage Estimates, U.S. Department of Labor, Bureau of Labor Statistics. May 2008.
** Average wages for one registered nurse ($31.31), one physician ($77.64), and one Administrator ($46.10);
*** Average wages for two registered nurse ($31.31), one physician ($77.64), and one Administrator ($46.10).

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total and annualized cost for conducting this research. The total budget for this three year study is $999,976. The administration task includes costs associated with the initial kick-off conference call with AHRQ and monthly progress reports and ongoing conference calls. The research plan task includes costs to finalize the research plan; conduct the literature search; prepare and submit the IRB applications and OMB package; recruit facilities; collect baseline and monthly data from medical record reviews and conduct pre- and post-intervention provider interviews; implement the intervention; and write the final report on the explanatory model. The dissemination costs include the writing of a dissemination plan and two manuscripts for publication as well as presentations at two national conferences. The final report costs include the writing of a draft and final report.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total	Annualized cost
Administration	$24,474	$8,158
Research Plan	591,788	197,263
Dissemination Plan	63,397	21,132
Final Report	46,501	15,500
Overhead	273,816	91,272
Total	999,976	333,325

Request for Comments

In accordance with tile above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 22, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–10197 Filed 4–30–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "Assessing the Impact of the National Implementation of TeamSTEPPS Master Training Program." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must he received by July 2, 2010.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Assessing the Impact of the National Implementation of TeamSTEPPS Master Training Program

As part of their effort to fulfill their mission goals, AHRQ, in collaboration with the Department of Defense's (DoD) Tricare Management Activity (TMA), developed TeamSTEPPS® (aka Team Strategies and Tools for Enhancing Performance and Patient Safety) to provide an evidence-based suite of tools and strategies for training teamwork-based patient safety to health care professionals. In 2007, AHRQ and DoD coordinated the national implementation of the TeamSTEPPS program. The main objective of this program is to improve patient safety by training a select group of stakeholders such as Quality Improvement Organization (QIO) personnel, High Reliability Organization (HRO) staff and healthcare system staff in various teamwork, communication, and patient safety concepts, tools, and techniques and ultimately helping to build a national infrastructure for supporting teamwork-based patient safety efforts in healthcare organizations and at the state level. The implementation includes the training of Master Trainers in various health care systems capable of stimulating the utilization and adoption of TeamSTEPPS in their health care delivery systems, providing technical assistance and consultation on implementing TeamSTEPPS, and developing various channels of learning (*e.g.,* user networks, various educational venues) for continuation support and improvement of teamwork in healthcare. During this effort, AHRQ has trained a corps of 2400 participants to serve as the Master Trainer infrastructure supporting national adoption of TeamSTEPPS. Participants in training become Master Trainers in TeamSTEPPS and are afforded the opportunity to observe the tools and strategies provided in the program in action. In addition to developing a corps of Master Trainers, AHRQ has also developed a series of support mechanisms for this effort including a data collection Web tool, a TeamSTEPPS call support center, and a monthly consortium to address any challenges encountered by implementers of TeamSTEPPS.

To understand the extent to which this infrastructure of patient safety knowledge and skills has been created, AHRQ will conduct an evaluation of the National Implementation of TeamSTEPPS Master Training program. The goals of this evaluation are to examine the extent to which training participants have been able to:

(1) Implement the TeamSTEPPS products, concepts, tools, and techniques in their home organizations and,

(2) the extent to which participants have spread that training, knowledge, and skills to their organizations, local areas, regions, and states.

This study is being conducted by AHRQ through its contractor, American Institutes for Research (AIR), pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality,

effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this assessment the following two data collections will be implemented:

(1) Web-based questionnaire to examine post-training activities and teamwork outcomes as a result of training from multiple perspectives. The questionnaire is directed to all master training participants. Items will cover post-training activities, implementation experiences, facilitators and barriers to implementation encountered, and perceived outcomes as a result of these activities.

(2) Semi-structured interviews will he conducted with members from organizations who participated in the TeamSTEPPS Master Training program. Information gathered from these interviews will be analyzed and used to draft a "lessons learned" document that will capture additional detail on the issues related to participants' and organizations' abilities to implement and disseminate the TeamSTEPPS post-training. The organizations will vary in terms of type of organization (*e.g.,* QIO or hospital associations versus healthcare systems) and region (*i.e.,* Northeast, Midwest, Southwest, Southeast, Mid-Atlantic, West Coast). In addition, we will strive to ensure representativeness of the site visits by ensuring that the distribution of organizations mirrors the distribution of organizations in the master training population. For example, if the distribution of organizations is such that only one out of every five organizations is a QIO, we will ensure that a maximum of two organizations in the site visit sample are QIOs. The interviews will more accurately reveal the degree of training spread for the organizations included. Interviewees will be drawn from qualified individuals serving in one of two roles (*i.e.,* implementers or facilitators). The interview protocol will be adapted for each role based on the respondent group and to some degree, for each individual, based on their training and patient safety experience.

Estimated Annual Respondent Burden

Exhibit I shows the estimated annualized burden hours for the respondent's time to participate in the study. Semi-structured interviews will be conducted with a maximum of 9 individuals from each of 9 participating organizations and will last about one hour each. The training participant questionnaire will be completed by approximately 10 individuals from each of about 240 organizations and is estimated to require 20 minutes to complete. The total annualized burden is estimated to be 881 hours.

Exhibit 2 shows the estimated annualized cost burden based on the respondents' time to participate in the study. The total cost burden is estimated to be $28,594.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Semi-structured interview	9	9	60/60	81
Training participant questionnaire	240	10	20/60	800
Total	249	NA	NA	881

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Semi-structured interview	9	81	$32.64	$2,644
Training participant questionnaire	240	800	32.64	26,112
Total	249	881	NA	28,756

* Based upon the mean of the average wages for all health professionals (29–0000) for the training participant questionnaire and for executives, administrators, and managers for the organizational leader questionnaire presented in the National Compensation Survey: Occupational Wages in the United States, May, 2008, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29-0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the total cost for this one year project; since the project is for only one year these are also the annualized costs. The total cost to the government for this activity is estimated to be $181,521 to conduct the one-time questionnaire and conduct nine site visits, as well as to analyze and present all results. This amount includes costs for developing the data collection tools ($24,889); collecting the data ($10,667); and analyzing the data ($35,061) and reporting the findings ($12,903).

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost
Project Development	$24,889
Data Collection Activities	108,667
Data Processing and Analysis	35,061
Publication of Results	12,903
Total	181,521

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 22, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–10199 Filed 4–30–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: "National Hospital Adverse Event Reporting System: Questionnaire Redesign and Testing." In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520. AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must he received by July 2, 2010.

ADDRESSES: Written comments should he submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

National Hospital Adverse Event Reporting System: Questionnaire Redesign and Testing

As provider of operational support to the chair of the Quality Interagency Task Force (QuIC), AHRQ coordinated the Federal response to the Institute of Medicine's (IOM) 1999 report on medical errors and outlined specific initiatives the QuIC agencies will take. The Errors Workgroup within the QuIC identified the need for measures to evaluate the use of adverse medical event reporting for managing and improving patient safety within healthcare institutions. In response, AHRQ created the Hospital Adverse Event Reporting Survey to Provide national estimates. This survey has been fielded twice, first in 2005 and again in 2008.

Revisions to the questionnaire and sample selection are now necessary in response to the Patient Safety and Quality Improvement Rule (Patient Safety Rule), 42 CFR Part 3, issued by the United States Department of Health and Human Services, which implements the Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), 42 U.S.C. 299b–21 through 299b–26. The Patient Safety Rule and Patient Safety Act authorize the creation of Patient Safety Organizations (PSO) to enhance quality and safety by collecting patient safety reports of adverse events. AHRQ started listing PSOs in late 2008 pursuant to the Patient Safety Act. These organizations have begun working with hospitals and other providers to monitor patient safety events according to common reporting formats, and to improve patient safety. This revised survey will be used for the third round of data collection in 2011, under a separate OMB clearance, to assess the impact of the PSOs and the Patient Safety Act on the use of adverse event reporting systems and will incorporate questions about reporting using the AHRQ Common Formats, and reporting information to a Patient Safety Organization.

This project is being conducted by AHRQ's contractor, Westat, pursuant to AHRQ's statutory mandates to (I) promote health care quality improvement by conducting and supporting research that develops and presents scientific evidence regarding all aspects of health care, including methods for measuring quality and strategies for improving quality (42 U.S.C. 299(b)(1)(F)) and (2) conduct and support research on health care and on systems for the delivery of such care, including activities with respect to quality measurement and improvement (42 U.S.C. 299a(a)(2).

Method of Collection

This project will include the following data collections:

(1) Semi-structured interviews will be conducted with one risk manager or other representative responsible for adverse event reporting from 7 participating hospitals and with one person from the two participating PSOs. These interviews will be conducted to learn more about the current hospital adverse event reporting environment and to understand how adverse event reporting may have changed in response to the Patient Safety Act. Survey developers will use the information from these interviews to develop questions for the revised questionnaire.

(2) Cognitive interviews will be conducted with one risk manager or other representative responsible for adverse event reporting in 30 participating hospitals. The purpose of these cognitive interviews is to test and refine the revised questionnaire. The questionnaire will be tested among respondents in hospitals with no reporting affiliation with a PSO, with reporting affiliations with one PSO, and with reporting affiliations with more than one PSO.

Results from these interviews will help inform actions by AHRQ to encourage effective adverse event reporting by hospitals, as part of its patient safety initiative, including standardization of reporting so that consistent concepts, information, and terminology are used in the patient safety arena. The survey can also serve as a baseline for changes about hospital-based adverse event reporting to Patient Safety Organizations and how the Patient Safety Act might have affected reporting structures and processes.

Estimated Annual Respondent Burden

Exhibit I shows the estimated annualized burden hours for the respondents time to participate in this project. Semi-structured interviews will be conducted with 9 persons representing 7 hospitals and 2 PSOs and will last for about an hour. Cognitive interviews will be conducted with one person in each of 30 participating hospitals and are expected to take one hour to complete. The total annual burden hours are estimated to be 39 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in the research. The total annual cost burden is estimated to be $1,664.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of organizations	Number of responses per responding organization	Hours per response	Total burden hours
Semi-structured interviews	9	1	1	9
Cognitive interviews	30	1	1	30
Total	39	NA	NA	39

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Semi-structured interviews	9	9	$42.67	$384
Cognitive interviews	30	30	42.67	1,280
Total	39	39	NA	1,664

* Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States 2008, "U.S. Department of Labor, Bureau of Labor Statistics."

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the Federal government to conduct this redesign of the Adverse Event Reporting Questionnaire and associated sample design. Since this project will last for one year the total and annualized costs are the same. The total cost is estimated to be $120,000.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$24,000	$24,000
Data Collection Activities	46,000	46,000
Data Processing and Analysis	26,000	26,000
Project Management	24,000	24,000
Total	120,000	120,000

Request for Comments

In accordance with the above-cited Paperwork Reduction Act legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of in formation technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 20, 2010.

Carolyn M. Clancy,

Director.

[FR Doc. 2010–10195 Filed 4–30–10; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Retroviral Vectors for Selective Reversible Immortalization of Stimulus-responding Primary Cells

Description of Invention: Researchers at the National Cancer Institute-Frederick, NIH, have developed a novel set of retroviral vectors and producer cell lines useful for selective reversible immortalization of primary cells (*i.e.* lymphocytes) that respond to a stimulus, such as a viral antigen (*e.g.*

HIV toxoids), a tumor antigen, or a growth factor.

Derived from the murine leukemia virus (MuLV), these retroviral vectors will only infect dividing cells. Therefore, only primary cells activated by the stimulus will be infected and immortalized, thereby creating an "antigen-specific trap."

The primary cells to be immortalized can be in targeted tissue or in stimulated ex vivo culture. The transduced cells can be expanded to large numbers without differentiating, and returned to the primary cell stage by removal of the introduced genes using a vector excision strategy.

Applications

- Isolation/replication of normally short-lived primary cells that respond to a stimulus.
- Immortalization of antigen-specific T cells for vaccine development or adoptive transfer immunotherapy.
- Production of primary cell lines for large-scale production of cell-secreted factors, cytokines, and other molecules.

Advantages

- System acts as an anti-senescence treatment: Cells that are normally short-lived can be kept in culture for years.
- Vectors with different markers are available to identify transduced cells and for cell selection.
- Excision allows for gene/marker removal.
- The MuLV-based system only infects dividing (*e.g.* activated) cells

Inventors: Eugene V. Barsov and David E. Ott (NCI).

Relevant Publications

1. E Barsov *et al.* Capture of antigen-specific T lymphocytes from human blood by selective immortalization to establish long-term T-cell lines maintaining primary cell characteristics. Immunol Lett. 2006 May 15;105(1):26–37. [PubMed: 16442639]
2. H Andersen *et al.* Transduction with human telomerase reverse transcriptase immortalizes a rhesus macaque CD8+ T cell clone with maintenance of surface marker phenotype and function. AIDS Res Hum Retroviruses 2007 Mar;23(3):456–465. [PubMed: 17411379]

Patent Status: HHS Reference No. E–140–2010/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: Available for biological materials licensing only.

Licensing Contact: Patrick P. McCue, PhD; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, AIDS and Cancer Virus Program, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov.* for more information.

A Method of Measuring Ultraviolet A (UVA) Protection in Sunscreen Products

Description of Invention: There are different types of ultraviolet (UV) rays in sunlight. UVB radiation causes redness (erythema) or sunburn. While UVA radiation, which absorbs deep into the skin, causes more long-term effects such as wrinkles, skin aging and skin cancer.

Effective sunscreens are expected to block both UVA and UVB radiation. The Sun Protection Factor (SPF) label found on all over-the-counter sunscreen products is a better measure for UVB protection than UVA protection. Currently, there is no standard in vivo test to determine the amount of UVA protection in sunscreen products, despite the fact that many products are advertised as effectively blocking both UVA and UVB radiation.

This invention describes sets of genes useful for measuring UVA exposure in human skin and assessing sunscreen products for their ability to block UVA radiation.

Application: A test for measuring UVA protection provided by sunscreens.

Development Status: Early stage.

Market: According to a report by the Global Industry Analysts, Inc., the sun care market is projected to reach $5.6 billion by the year 2015.

Inventors: Atsushi Terunuma and Jonathan C. Vogel (NCI).

Related Publication: In preparation.

Patent Status: U.S. Provisional Application No. 61/309,179 filed 01 Mar 2010 (HHS Reference No. E–097–2010/0–US–01).

Licensing Status: Available for licensing.

Licensing Contact: Charlene Sydnor, PhD; 301–435–4689; *sydnorc@mail.nih.gov.*

Collaborative Research Opportunity: The Center for Cancer Research, Dermatology Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize this technology. Please contact John Hewes, PhD at 301–435–3131 or *hewesj@mail.nih.gov* for more information.

Laser Scanning Microscopy for Three Dimensional Motion Tracking for Volumetric Data

Description of Invention: The technology offered for licensing and for further development is in the field of volumetric tissue scanning microscopy. More specifically, the invention provides for a device, system and methods that can acquire and analyze volumetric data from a high-speed laser-scanning microscope and compute motion of the sample under the microscope in three dimensions. This computed motion is used to adjust position of the sample in real time to maintain field of view and relative location. This motion compensation scheme can be used to collect micron-scale information over time, which can be important in a number of research or medical device applications.

Applications

- Biomedical research involving in vivo microscopy.
- Real time tracking of cells or cellular structures.
- Tracking tissue during various physiological perturbations and observation of dynamic physiological processes. Physiological perturbations include metabolic substrates, drug delivery and anoxia.
- Potential applications in molecular diagnostic imaging.
- Potential applications in medical procedures such as biopsy and microsurgery where information has to be collected from a specific microscope location over a period of time.

Advantages

- Improved analytical capabilities for biological processes.
- Improved capabilities of accurately examining and studying physiological perturbations.
- Potential improvement in medical procedures such as biopsy.
- May readily be adaptable to commercial microscopes.

Development Status: The invention is fully developed. Further work needs to be done in the following areas:

- Adaptation to different types of microscopes.
- Further demonstration of utility of in-vivo imaging.

Inventors: James L. Schroeder (NHLBI) *et al.*

Related Publication: Schroeder JL, Luger-Hamer M, Pursley R, Pohida T, Chefd'Hotel C, Kellman P, Balaban RS. Short communication: Subcellular motion compensation for minimally invasive microscopy, in vivo: evidence for oxygen gradients in resting muscle.

Circ Res. 2010 Apr 2;106(6):1129–1133. [PubMed: 20167928].

Patent Status: U.S. Provisional Application No. 61/245,586 filed 24 Sep 2009 (HHS Reference No. E–290–2009/0–US–01).

Licensing Status: Available for licensing.

Licensing Contacts: Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov,* or Michael Shmilovich, Esq.; 301–435–5019; *ShmilovichM@mail.nih.gov.*

Collaborative Research Opportunity: The National Heart, Lung, and Blood Institute, Laboratory of Cardiac Energetics, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize automatic 3D volumetric motion tracking systems for use during in vivo microscopy. Please contact Denise Crooks, PhD at 301–435–0103 or *crooksd@nhlbi.nih.gov* for more information.

Dated: April 26, 2010.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2010–10264 Filed 4–30–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2010–0031]

Privacy Act of 1974; Department of Homeland Security United States Immigration Customs and Enforcement—011 Immigration and Enforcement Operational Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of amendment of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974 the Department of Homeland Security U.S. Immigration and Customs Enforcement is updating an existing system of records titled, Department of Homeland Security/U.S. Immigration and Customs Enforcement—011 Immigration and Enforcement Operational Records System of Records (ENFORCE). With the publication of this updated system of records, a new routine use has been proposed. The routine use would support the deployment of the ICE Online Detainee Locator System, which provides a searchable online database to help members of the public locate detainees in ICE custody. This routine use would also support the sharing of information about ICE detainees for the purpose of allowing family members and other individuals to deposit money in detainee accounts for telephone and commissary services within a detention facility. A Privacy Impact Assessment that describes the Online Detainee Locator System is being published concurrently with this notice. It can be found on the DHS Web site at *http://www.dhs.gov/privacy.* This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before June 2, 2010. This amended system will be effective June 2, 2010.

ADDRESSES: You may submit comments, identified by docket number DHS–2010–0031 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lyn Rahilly (703–732–3300), Privacy Officer, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Mail Stop 5004, Washington, DC 20536; or Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

ICE is proposing a new routine use to permit sharing of limited information about current and former persons in ICE custody through the Online Detainee Locator System (ODLS). ODLS is a publicly accessible, Web-based system owned by U.S. Immigration and Customs Enforcement (ICE) Office of Detention and Removal Operations (DRO).

DRO is responsible for promoting public safety and national security by arresting, detaining, and removing persons from the United States in accordance with the Immigration and Nationality Act. ICE developed ODLS as a service to the public, especially family members and legal representatives, to help locate individuals arrested for administrative immigration violations and who are in or have recently left ICE custody ("detainees"). Currently, members of the public must contact a DRO field office by phone to determine the location of a detainee. With the deployment of this automated system, the public will be able to locate detainees more quickly and efficiently through an online query. The system will ultimately be available in several languages to help users whose native language is not English.

ODLS is a Web-based system that is accessible from an Internet browser and may be used by any member of the public. ODLS is scheduled to deploy in June 2010, and will be accessible by visiting ICE's public Web site (*http://www.ice.gov/locator*). Persons using ODLS do not need to set up an account or get special permission to use the system. ODLS provides two ways to search for a detainee: (1) Perform a query using an Alien Registration Number (A–Number) and country of birth; or (2) perform a query using a full name and country of birth. After receiving the query entered by the user, ODLS searches for a match among current ICE detainees and detainees who have been booked out of ICE custody (regardless of the reason) within the last 60 days. All records that match the user's query are returned to the user in a list of one or more search results.

ODLS only performs exact-match searches. This means that the search query entered by the user (specifically, the name or A–Number) must exactly match the information in a detention record in order for the record to be identified as a match and included in the ODLS search results. For example, a search for "Robert Smith" will not return a detention record for "Robert Smyth" or "Bob Smith." When conducting an A–Number search, ODLS users will see a maximum of one record in the results because A–Numbers are assigned to individuals uniquely. When conducting a name-based search, however, ODLS users may see multiple records in the results if several detainees share the same name and country of birth. Users may use the year of birth provided in the results to distinguish among detainees with the same name.

ODLS only contains information about individuals who are currently in ICE custody or were previously detained by ICE within the past 60 days. If a search is performed for detainees who

have never been in ICE custody or were released from ICE custody more than 60 days ago, ODLS will return a result of "no records found." If a matching detainee record is found, the ODLS results screen will display the detainee's custody status as either "in custody" or "not in custody." An "in custody" status means the individual is currently in ICE custody, and ODLS will display the detention facility where the person is being held, the contact information for the facility, a link to the facility's Web site, and the contact information for the DRO office responsible for the detainee's immigration case. A status of "not in custody" means the individual was released from ICE custody within the last 60 days for any reason. The "not in custody" status will be displayed if the individual was removed from or voluntarily departed the United States, was released on bond or through an alternatives-to-detention program, was released into the United States due to the resolution of their immigration case (*e.g.,* grant of an immigration benefit that permits them to remain in the country), or was transferred into the custody of another law enforcement or custodial agency. For individuals released from ICE custody within the last 60 days, ODLS displays contact information for the DRO office responsible for the detainee's immigration case.

ODLS also provides resources to help users find or identify the detainee they are seeking. First, ODLS includes a frequently asked questions (FAQ) page to answer common questions about the system and to help troubleshoot problems. Second, for those who are unable to locate the detainee in ODLS, a link is provided to all DRO offices so the public can contact the office in the appropriate geographical area for assistance. Finally, for every detainee included in ODLS, the responsible DRO field office is identified and its contact information is provided so family members and attorneys can call to confirm the detainee's identity, arrange for bond, or ask for additional information. Concurrently with the publication of this amended SORN, ICE is publishing a PIA for ODLS on the Department's Privacy Office Web site (*http://www.dhs.gov/privacy*).

In addition to supporting ODLS, the proposed routine use would also support the sharing of information about ICE detainees for the purpose of allowing family members and other individuals to deposit money in detainee accounts for telephone and commissary services within a detention facility. At detention facilities that house ICE detainees, detainees are able to pay to make telephone calls and to purchase items in the detention facility's commissary. Some detention facilities have on-site kiosks and Web site and telephone services that allow members of the public to deposit money in detainees' telephone and/or commissary accounts for that detention facility. This proposed routine use would support the operation of these kiosks, Web sites, and telephone systems that allow the public to search for a detainee at a particular facility and make a deposit into the detainee's account.

In accordance with the Privacy Act of 1974 the Department of Homeland Security U.S. Immigration and Customs Enforcement is updating an existing system of records titled, Department of Homeland Security/U.S. Immigration and Customs Enforcement—011 Immigration and Enforcement Operational Records System of Records (ENFORCE). With the publication of this updated system of records, a new routine use has been proposed. The routine use would support the deployment of the ICE Online Detainee Locator System, which provides a searchable online database to help members of the public locate detainees in ICE custody. This routine use would also support the sharing of information about ICE detainees for the purpose of allowing family members and other individuals to deposit money in detainee accounts for telephone and commissary services within a detention facility. A Privacy Impact Assessment that describes the Online Detainee Locator System is being published concurrently with this notice. It can be found on the DHS Web site at *http://www.dhs.gov/privacy.* This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/ICE—011 Immigration and Enforcement Operational Records (ENFORCE) System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records

DHS/ICE–011.

SYSTEM NAME:

Immigration and Enforcement Operational Records (ENFORCE).

SECURITY CLASSIFICATION:

Unclassified; Controlled Unclassified Information (CUI).

SYSTEM LOCATION:

Records are maintained at the U.S. Immigration Customs and Enforcement (ICE) Headquarters in Washington, DC, ICE field and attaché offices, and detention facilities operated by or on behalf of ICE, or that otherwise house individuals detained by ICE.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

1. Individuals arrested, detained, and/or removed for criminal and/or administrative violations of the Immigration and Nationality Act, or individuals who are the subject of an ICE immigration detainer issued to another custodial agency;

2. Individuals arrested by ICE law enforcement personnel for violations of Federal criminal laws enforced by ICE or DHS;

3. Individuals who fail to leave the United States after receiving a final order of removal, deportation, or exclusion, or who fail to report to ICE

for removal after receiving notice to do so (fugitive aliens);

4. Individuals who are granted parole into the United States under section 212(d)(5) of the Immigration and Nationality Act (parolees);

5. Other individuals whose information may be collected or obtained during the course of an immigration enforcement or criminal matter, such as witnesses, associates, and relatives;

6. Attorneys or representatives who represent individuals listed in categories (a)–(d) above;

7. Persons who post or arrange bond for the release of an individual from ICE detention, or receive custodial property of a detained alien;

8. Personnel of other agencies who assisted or participated in the arrest or investigation of an alien, or who are maintaining custody of an alien; and

9. Prisoners of the U.S. Marshals Service held in ICE detention facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

1. Biographic, descriptive, historical and other identifying data, including but not limited to: Names; fingerprint identification number (FIN); date and place of birth; passport and other travel document information; nationality; aliases; Alien Registration Number (A–Number); Social Security Number; contact or location information (e.g., known or possible addresses, phone numbers); visa information; employment, educational, immigration, and criminal history; height, weight, eye color, hair color and other unique physical characteristics (*e.g.,* scars and tattoos).

2. Biometric data: Fingerprints and photographs. DNA samples required by DOJ regulation (see 28 CFR part 28) to be collected and sent to the Federal Bureau of Investigation (FBI). DNA samples are not retained or analyzed by DHS.

3. Information pertaining to ICE's collection of DNA samples, limited to the date and time of a successful collection and confirmation from the FBI that the sample was able to be sequenced. ICE does not receive or maintain the results of the FBI's DNA analysis (*i.e.,* DNA sequences).

4. Case-related data, including: Case number, record number, and other data describing an event involving alleged violations of criminal or immigration law (location, date, time, event category, types of criminal or immigration law violations alleged, types of property involved, use of violence, weapons, or assault against DHS personnel or third parties, attempted escape and other related information; event categories describe broad categories of criminal law enforcement, such as immigration worksite enforcement, contraband smuggling, and human trafficking). ICE case management information, including: Case category, case agent, date initiated, and date completed.

5. Birth, marriage, education, employment, travel, and other information derived from affidavits, certificates, manifests, and other documents presented to or collected by ICE during immigration and law enforcement proceedings or activities. This data typically pertains to subjects, relatives, and witnesses.

6. Detention data on aliens, including immigration detainers issued; transportation information; detention-related identification numbers; custodial property; information about an alien's release from custody on bond, recognizance, or supervision; detention facility; security classification; book-in/book-out date and time; mandatory detention and criminal flags; aggravated felon status; and other alerts.

7. Detention data for U.S. Marshals Service prisoners, including: Prisoner's name, date of birth, country of birth, detainee identification number, FBI identification number, state identification number, book-in date, book-out date, and security classification;

8. Limited health information relevant to an individual's placement in an ICE detention facility or transportation requirements (*e.g.,* general information on physical disabilities or other special needs to ensure that an individual is placed in a facility or bed that can accommodate their requirements). Medical records about individuals in ICE custody (*i.e.,* records relating to the diagnosis or treatment of individuals) are maintained in DHS/ICE—013 Alien Medical Records System of Records;

9. Progress, status and final result of removal, prosecution, and other DHS processes and related appeals, including: Information relating to criminal convictions, incarceration, travel documents and other information pertaining to the actual removal of aliens from the United States.

10. Contact, biographical and identifying data of relatives, attorneys or representatives, associates or witnesses of an alien in proceedings initiated and/or conducted by DHS including, but not limited to: Name, date of birth, place of birth, telephone number, and business or agency name.

11. Data concerning personnel of other agencies that arrested, or assisted or participated in the arrest or investigation of, or are maintaining custody of an individual whose arrest record is contained in this system of records. This can include: Name, title, agency name, address, telephone number and other information.

12. Data about persons who post or arrange an immigration bond for the release of an individual from ICE custody, or receive custodial property of an individual in ICE custody. This data may include: Name, address, telephone number, Social Security Number and other information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1103, 1225, 1226, 1324, 1357, 1360, and 1365(a)(b); Justice for All Act of 2004 (Pub. L. 108–405); DNA Fingerprint Act of 2005 (Pub. L. 109–162); Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109–248); and 28 CFR part 28, "DNA–Sample Collection and Biological Evidence Preservation in the Federal Jurisdiction."

PURPOSE(S):

The purposes of this system are:

1. To support the identification, apprehension, and removal of individuals unlawfully entering or present in the United States in violation of the Immigration and Nationality Act, including fugitive aliens.

2. To support the identification and arrest of individuals (both citizens and non-citizens) who commit violations of Federal criminal laws enforced by DHS.

3. To track the process and results of administrative and criminal proceedings against individuals who are alleged to have violated the Immigration and Nationality Act or other laws enforced by DHS.

4. To support the grant, denial, and tracking of individuals who seek or receive parole into the United States.

5. To provide criminal and immigration history information during DHS enforcement encounters, and background checks on applicants for DHS immigration benefits (e.g., employment authorization and petitions).

6. To identify potential criminal activity, immigration violations, and threats to homeland security; to uphold and enforce the law; and to ensure public safety.

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 DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (DOJ) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, or to a court, magistrate, administrative tribunal, opposing counsel, parties, and witnesses, in the course of a civil or criminal proceeding before a court or adjudicative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The U.S. or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. DHS 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 DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, including to an actual or potential party or his or her attorney, or in connection with criminal law proceedings.

I. To other Federal, State, local, or foreign government agencies, individuals, and organizations during the course of an investigation, proceeding, or activity within the purview of immigration and nationality laws to elicit information required by DHS/ICE to carry out its functions and statutory mandates.

J. To the appropriate foreign government agency charged with enforcing or implementing laws where there is an indication of a violation or potential violation of the law of another nation (whether civil or criminal), and to international organizations engaged in the collection and dissemination of intelligence concerning criminal activity.

K. To other Federal agencies for the purpose of conducting national intelligence and security investigations.

L. To any Federal agency, where appropriate, to enable such agency to make determinations regarding the payment of Federal benefits to the record subject in accordance with that agency's statutory responsibilities.

M. To foreign governments for the purpose of coordinating and conducting the removal of aliens to other nations; and to international, foreign, and intergovernmental agencies, authorities, and organizations in accordance with law and formal or informal international arrangements.

N. To family members and attorneys or other agents acting on behalf of an alien, to assist those individuals in determining whether: (1) The alien has been arrested by DHS for immigration violations; (2) the location of the alien if in DHS custody; or (3) the alien has been removed from the United States, provided however, that the requesting individuals are able to verify the alien's date of birth or Alien Registration Number (A–Number), or can otherwise present adequate verification of a familial or agency relationship with the alien.

O. To the DOJ Executive Office of Immigration Review (EOIR) or their contractors, consultants, or others performing or working on a contract for EOIR, for the purpose of providing information about aliens who are or may be placed in removal proceedings so that EOIR may arrange for the provision of educational services to those aliens under EOIR's Legal Orientation Program.

P. To attorneys or legal representatives for the purpose of facilitating group presentations to aliens in detention that will provide the aliens with information about their rights under U.S. immigration law and procedures.

Q. To a Federal, State, tribal or local government agency to assist such agencies in collecting the repayment of recovery of loans, benefits, grants, fines, bonds, civil penalties, judgments or other debts owed to them or to the U.S. Government, and/or to obtain information that may assist DHS in collecting debts owed to the U.S. Government.

R. To the State Department in the processing of petitions or applications for immigration benefits and non-immigrant visas under the Immigration and Nationality Act, and all other immigration and nationality laws including treaties and reciprocal agreements; or when the State Department requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

S. To the Office of Management and Budget (OMB) in connection with the review of private relief legislation as set forth in OMB Circular No. A–19 at any

stage of the legislative coordination and clearance process as set forth in the Circular.

T. To the U.S. Senate Committee on the Judiciary or the U.S. House of Representatives Committee on the Judiciary when necessary to inform members of Congress about an alien who is being considered for private immigration relief.

U. To a criminal, civil, or regulatory law enforcement authority (whether Federal, State, local, territorial, tribal, international or foreign) where the information is necessary for collaboration, coordination and de-confliction of investigative matters, to avoid duplicative or disruptive efforts and for the safety of law enforcement officers who may be working on related investigations.

V. To the U.S. Marshals Service concerning Marshals Service prisoners that are or will be held in detention facilities operated by or on behalf of ICE in order to coordinate the transportation, custody, and care of these individuals.

W. To third parties to facilitate placement or release of an alien (*e.g.,* at a group home, homeless shelter, etc.) who has been or is about to be released from ICE custody but only such information that is relevant and necessary to arrange housing or continuing medical care for the alien.

X. To an appropriate domestic government agency or other appropriate authority for the purpose of providing information about an alien who has been or is about to be released from ICE custody who, due to a condition such as mental illness, may pose a health or safety risk to himself/herself or to the community. ICE will only disclose information about the individual that is relevant to the health or safety risk they may pose and/or the means to mitigate that risk (*e.g.,* the alien's need to remain on certain medication for a serious mental health condition).

Y. To the DOJ Federal Bureau of Prisons (BOP) and other Federal, State, local, territorial, tribal and foreign law enforcement or custodial agencies for the purpose of placing an immigration detainer on an individual in that agency's custody, or to facilitate the transfer of custody of an individual from ICE to the other agency. This will include the transfer of information about unaccompanied minor children to the U.S. Department of Health and Human Services (HHS) to facilitate the custodial transfer of such children from ICE to HHS.

Z. To DOJ, disclosure of DNA samples and related information as required by 28 CFR part 28.

AA. To DOJ, disclosure of arrest and removal information for inclusion in relevant DOJ law enforcement databases and for use in the enforcement Federal firearms laws (*e.g.,* Brady Act).

BB. To Federal, State, local, tribal, territorial, or foreign governmental or quasi-governmental agencies or courts to confirm the location, custodial status, removal or voluntary departure of an alien from the United States, in order to facilitate the recipient agencies' exercise of responsibilities pertaining to the custody, care, or legal rights (including issuance of a U.S. passport) of the removed individual's minor children, or the adjudication or collection of child support payments or other debts owed by the removed individual.

CC. Disclosure to victims regarding custodial information, such as release on bond, order of supervision, removal from the United States, or death in custody, about an individual who is the subject of a criminal or immigration investigation, proceeding, or prosecution.

DD. To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury, (*e.g.,* disclosure of custodial release information to witnesses who have received threats from individuals in custody.)

EE. To an individual or entity seeking to post or arrange, or who has already posted or arranged, an immigration bond for an alien to aid the individual or entity in (1) identifying the location of the alien, or (2) posting the bond, obtaining payments related to the bond, or conducting other administrative or financial management activities related to the bond.

FF. To appropriate Federal, State, local, tribal, or foreign governmental agencies or multilateral governmental organizations where DHS is aware of a need to utilize relevant data for purposes of testing new technology and systems designed to enhance national security or identify other violations of law.

GG. To members of the public, disclosure of limited detainee biographical information for the purpose of (1) identifying whether the detainee is in ICE custody and the custodial location, and (2) facilitating the deposit of monies into detainees' accounts for telephone or commissary services in a detention facility.

HH. To the news media and the public, with the approval of the Chief Privacy Officer in consultation with counsel, when there exists a legitimate public interest in the disclosure of the information or when disclosure is necessary to preserve confidence in the integrity of DHS or is necessary to demonstrate the accountability of DHS's officers, employees, or individuals covered by the system, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information can be stored in case file folders, cabinets, safes, or a variety of electronic or computer databases and storage media.

RETRIEVABILITY:

Records may be retrieved by name, identification numbers including, but not limited to, alien registration number (A–Number), fingerprint identification number, Social Security Number, case or record number if applicable, case related data and/or combination of other personal identifiers including, but not limited to, date of birth and nationality.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

ICE is in the process of drafting a proposed record retention schedule for the information maintained in the Enforcement Integrated Database (EID). ICE anticipates retaining records of arrests, detentions and removals in EID for one-hundred (100) years; records concerning U.S. Marshals Service prisoners for ten (10) years; fingerprints and photographs collected using Mobile IDENT for up to seven (7) days in the cache of an encrypted government laptop; Enforcement Integrated Database Data Mart (EID–DM), ENFORCE Alien Removal Module Data Mart (EARM–DM), and ICE Integrated Decision Support (IIDS) records for seventy-five (75) years; user account management records (UAM) for ten (10) years

following an individual's separation of employment from Federal service; statistical records for ten (10) years; audit files for fifteen (15) years; and backup files for up to one (1) month.

ICE anticipates retaining records from the Fugitive Case Management System (FCMS) for ten (10) years after a fugitive alien has been arrested and removed from the United States; 75 years from the creation of the record for a criminal fugitive alien that has not been arrested and removed; ten (10) years after a fugitive alien reaches 70 years of age, provided the alien has not been arrested and removed and does not have a criminal history in the United States; ten (10) years after a fugitive alien has obtained legal status; ten (10) years after arrest and/or removal from the United States for a non-fugitive alien's information, whichever is later; audit files for 90 days; backup files for 30 days; and reports for ten (10) years or when no longer needed for administrative, legal, audit, or other operations purposes.

SYSTEM MANAGER AND ADDRESS:

Unit Chief, Law Enforcement Systems/Data Management, U.S. Immigration and Customs Enforcement, Office of Investigations Law Enforcement Support and Information Management Division, Potomac Center North, 500 12th Street, SW., Washington, DC 20536.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to ICE's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under "contacts."

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records in the system are supplied by several sources. In general, information is obtained from individuals covered by this system, and other Federal, State, local, tribal, or foreign governments. More specifically, DHS/ICE–011 records derive from the following sources:

(a) Individuals covered by the system and other individuals (*e.g.,* witnesses, family members);

(b) Other Federal, State, local, tribal, or foreign governments and government information systems;

(c) Business records;

(d) Evidence, contraband, and other seized material; and

(e) Public and commercial sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Secretary of Homeland Security has exempted portions of this system of records from subsections (c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), and (e)(8); and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, the Secretary of Homeland Security has exempted portions of this system of records from subsections (c)(3); (d); (e)(1), (e)(4)(G), and (e)(4)(H) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that records in the system are subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k)(2).

In addition, to the extent a record contains information from other exempt systems of records, DHS will rely on the exemptions claimed for those systems.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2010–10286 Filed 4–30–10; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N090]
[96300–1671–0000–P5]

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

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 (ESA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

DATES: We must receive requests for documents or comments on or before June 2, 2010.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under

ADDRESSES. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, the Endangered Species Act of 1973, section 10(a)(1)(A), as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

Endangered Species

Applicant: Denver Zoological Gardens, Denver, CO; PRT–213136

The applicant requests a permit to import eight captive born northern bald ibis (*Geronticus eremita*) from Zoologisch-Botanischer Garten Wilhelma in Stuttgart, Germany, for the purpose of enhancement of the species through captive breeding and conservation education.

Applicant: Wildlife Discovery Center – City of Lake Forest, Lake Forest, IL; PRT–02010A

The applicant requests a permit to import a male American Crocodile (*Crocodylus acutus*) from Cherot-Rose American Crocodile Education Sanctuary, Toledo, Belize that was rescued from the wild for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1–year period.

Applicant: Los Angeles Zoo, Los Angeles, CA; PRT–08939A

The applicant requests a permit to export one male yellow-footed rock wallaby (*Petrogale xanthopus*) born in captivity to Tierpark Berlin, Berlin, Germany for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 1–year period.

Applicant: Tarzan Zerbini Circus, Webb City, MO; PRT #065145, 065146, 065149

The applicant request permits to re-issue for re-export and re-import Asian elephants (*Elephas maximus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are 065145, Marie; 065146, Roxy; and 065149, Schell. This notification covers activities to be conducted by the applicant over a 3–year period and the import of any potential progeny born while overseas.

Applicant: Steve Martin's Working Wildlife, Frazier Park, CA; PRT #069429 and 069443

The applicant request permits to re-issue for re-export and re-import African leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are 069429, Ivory and 069443, Crystal. This notification covers activities to be conducted by the applicant over a 3–year period and the import of any potential progeny born while overseas.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James Selman, Gonzales, TX; PRT–03116A

Applicant: Gerhard Meier, Highland Park, IL; PRT–03158A

Dated: April 23, 2010

Brenda Tapia

Program Analyst, Branch of Permits, Division of Management Authority

[FR Doc. 2010–10253 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Choctaw Nation of Oklahoma Alcohol Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Choctaw Nation of Oklahoma's Alcohol Control Ordinance, which was adopted by the Tribal Council of the Choctaw Nation of Oklahoma under Council Bill CB–64–2010 enacted on March 13, 2010. The Alcohol Control Ordinance regulates and controls the manufacture, distribution, possession, and sale of alcohol on Tribal lands of the Choctaw Nation of Oklahoma. The Tribal lands are located in Indian country and this enactment will increase the ability of the Tribal government to control alcohol-related activities within the Tribe's jurisdiction and at the same time will provide an important source of revenue for the continued operation and strengthening of the Tribal government and the delivery of Tribal services.

DATES: *Effective Date:* This Ordinance is effective on May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Diane Buck, Tribal Government Services Officer, Eastern Oklahoma Regional Office, P.O. Box 8002, Muskogee, OK 74402–8002, Telephone: (918) 781–4685, Fax (918) 781–4649; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor

ordinances for the purpose of regulating liquor transactions in Indian country. The governing body of the Choctaw Nation of Oklahoma enacted the legislation on March 13, 2010. The purpose of this Ordinance is to generate revenue to fund needed Tribal programs and services, to promote public safety, and to control all alcohol-related activities within the jurisdiction of the Choctaw Nation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Alcohol Control Ordinance of the Choctaw Nation of Oklahoma was accepted by the Tribal Council of the Choctaw Nation of Oklahoma on March 13, 2010, through Council Bill CB–64–2010.

Dated: April 22, 2010.

Paul Tsosie,

Chief of Staff—Indian Affairs.

The Alcohol Control Ordinance of the Choctaw Nation of Oklahoma reads as follows:

CHOCTAW NATION OF OKLAHOMA

ALCOHOL CONTROL ORDINANCE

ARTICLE I. INTRODUCTION.

Section 1.1. Title.

This Ordinance shall be known as the "Choctaw Nation of Oklahoma Alcohol Control Ordinance."

Section 1.2. Authority.

This Ordinance is enacted pursuant to the Act of August 15, 1953, Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. § 1161, and Article IX, Section 4 of the Constitution of the Choctaw Nation of Oklahoma.

Section 1.3. Purpose.

The purpose of this Ordinance is to regulate and control the manufacture, distribution, possession, and sale of Alcohol on Tribal lands of the Choctaw Nation of Oklahoma. The enactment of this Ordinance will enhance the ability of the Choctaw Nation of Oklahoma to control all such alcohol-related activities within the jurisdiction of the Tribe and will provide an important source of revenue for the continued operation and strengthening of the Choctaw Nation of Oklahoma and the delivery of important governmental services.

Section 1.4. Application of Federal Law.

Federal law forbids the introduction, possession, and sale of liquor in Indian Country (18 U.S.C. § 1154 and other statutes), except when in conformity both with the laws of the State and the Tribe (18 U.S.C. § 1161). As such, compliance with this Ordinance shall be in addition to, and not a substitute for, compliance with the laws of the State of Oklahoma.

Section 1.5. Administration of Ordinance.

The Tribal Council, through its powers vested under the Constitution of the Choctaw Nation of Oklahoma and this Ordinance, delegates to the Alcohol Regulatory Authority the authority to exercise all of the powers and accomplish all of the purposes as set forth in this Ordinance, which may include, but are not limited to, the following actions:

A. Adopt and enforce rules and regulations for the purpose of effectuating this Ordinance, which includes the setting of fees, fines and other penalties;

B. Execute all necessary documents; and

C. Perform all matters and actions incidental to and necessary to conduct its business and carry out its duties and functions under this Ordinance.

Section 1.6. Sovereign Immunity Preserved.

A. The Tribe is immune from suit in any jurisdiction except to the extent that the Tribal Council of the Choctaw Nation of Oklahoma or the United States Congress expressly and unequivocally waives such immunity by approval of written tribal resolution or Federal statute.

B. Nothing in this Ordinance shall be construed as waiving the sovereign immunity of the Choctaw Nation of Oklahoma or the Alcohol Regulatory Authority as an agency of the Choctaw Nation of Oklahoma.

Section 1.7. Applicability.

This Ordinance shall apply to all commercial enterprises located within the Tribal lands of the Choctaw Nation of Oklahoma consistent with applicable Federal Liquor Laws.

Section 1.8. Computation of Time.

Unless otherwise provided in this Ordinance, in computing any period of time prescribed or allowed by this Ordinance, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. For the purposes of this Ordinance, the term "legal holiday" shall mean all legal holidays under Tribal or Federal law. All documents mailed shall be deemed served at the time of mailing.

Section 1.9. Liberal Construction.

The provisions of this Ordinance shall be liberally construed to achieve the purposes set forth, whether clearly stated or apparent from the context of the language used herein.

Section 1.10. Collection of Applicable Fees, Taxes, or Fines.

The Alcohol Regulatory Authority shall have the authority to collect all applicable and lawful fees, taxes, and or fines from any person or Licensee as imposed by this Ordinance. The failure of any Licensee to deliver applicable taxes collected on the sale of Alcoholic Beverages shall subject the Licensee to penalties, including, but not limited to the revocation of said License.

ARTICLE II. DECLARATION OF PUBLIC POLICY

Section 2.1. Matter of Special Interest.

The manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the jurisdiction of the Choctaw Nation of Oklahoma are matters of significant concern and special interest to the Tribe. The Tribal Council hereby declares that the policy of the Choctaw Nation of Oklahoma is to eliminate the problems associated with unlicensed, unregulated, and unlawful importation, distribution, manufacture, possession, and sale of Alcoholic Beverages for commercial purposes and to promote temperance in the use and consumption of Alcoholic Beverages by increasing the Tribe's control over such activities on Tribal lands.

Section 2.2. Federal Law.

The introduction of Alcohol within the jurisdiction of the Tribe is currently prohibited by federal law (18 U.S.C. § 1154), except as provided for therein, and the Tribe is expressly delegated the right to determine when and under what conditions Alcohol, including Alcoholic Beverages, shall be permitted therein (18 U.S.C. § 1161).

Section 2.3. Need for Regulation.

The Tribe finds that the Federal Liquor Laws prohibiting the introduction, manufacture, distribution, possession, sale, and consumption of Alcoholic Beverages within the Tribal lands has proven ineffective and that the problems associated with same should be addressed by the laws of the Tribe, with all such business activities related thereto subject to the taxing and regulatory authority of the Alcohol Regulatory Authority.

Section 2.4. Geographic Locations.

The Tribe finds that the introduction, manufacture, distribution, possession, sale, and consumption of Alcohol, including Alcoholic Beverages, shall be regulated under this Ordinance only where such activity will be conducted within or upon Tribal lands.

Section 2.5. Definitions.

As used in this Ordinance, the following words shall have the following meanings unless the context clearly requires otherwise:

A. "Alcohol" means the product of distillation of fermented liquid, whether or not rectified or diluted with water, including, but not limited to Alcoholic Beverages as defined herein, but does not mean ethyl or industrial alcohol, diluted or not, that has been denatured or otherwise rendered unfit for purposes of consumption by humans.

B. "Alcohol Regulatory Authority" means the Members of the Choctaw Nation Business Committee.

C. "Alcoholic Beverage(s)" when used in this Ordinance means, and shall include any liquor, beer, spirits, or wine, by whatever name they may be called, and from whatever source and by whatever process they may be produced, and which contain a sufficient percent of alcohol by volume which, by law, makes said beverage subject to regulation as an intoxicating beverage under the laws of the State of Oklahoma. Alcoholic Beverages include all forms of "low-point beer" as defined under the laws of the State of Oklahoma.

D. "Applicant" means any person who submits an application to the Alcohol Regulatory Authority for an Alcoholic Beverage License and who has not yet received such a License.

E. "Constitution" means the Constitution of the Choctaw Nation of Oklahoma.

F. "Tribal Council" means the duly elected legislative body of the Choctaw Nation of Oklahoma authorized to act in and on all matters and subjects upon which the Tribe is empowered to act, now or in the future.

G. "Federal Liquor Laws" means all laws of the United States of America that apply to or regulate in any way the introduction, manufacture, distribution, possession, or sale of any form of Alcohol, including, but not limited to 18 U.S.C. §§ 1154 & 1161.

H. "Legal Age" means twenty-one (21) years of age.

I. "License" or "Alcoholic Beverage License" means a license issued by the Alcohol Regulatory Authority authorizing the introduction, manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes under the provisions of this Ordinance.

J. "Licensee" means a commercial enterprise that holds an Alcoholic Beverage License issued by the Alcohol Regulatory Authority and includes any employee or agent of the Licensee.

K. "Liquor store" means any business, store, or commercial establishment at which Alcohol is sold and shall include any and all businesses engaged in the sale of Alcoholic Beverages, whether sold as packaged or by the drink.

L. "Manufacturer" means any person engaged in the manufacture of Alcohol, including, but not limited to the manufacture of Alcoholic Beverages.

M. "Oklahoma Liquor License" means any license or permit issued by the State of Oklahoma, including any agency, subdivision, or county thereof, regulating any form of Alcohol, including, but not limited to any form of Alcoholic Beverage. Any license or permit issued for the sale or distribution of "low-point beer", as defined under Oklahoma law, shall be considered an "Oklahoma Liquor License" under this Ordinance.

N. "Ordinance" means this Choctaw Nation of Oklahoma Alcohol Control Ordinance, as hereafter amended.

O. The words "package" or "packaged" means the sale of any Alcoholic Beverage by delivery of same by a seller to a purchaser in any container, bag, or receptacle for consumption beyond the premises or location designated on the seller's License.

P. "Public place" means and shall include any tribal, county, state, or federal highways, roads, and rights-of-way; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; public restaurants, buildings, meeting halls, hotels, theaters, retail stores, and business establishments generally open to the public and to which the public is allowed to have unrestricted access; and all other places to which the general public has unrestricted right of access and that are generally used by the public. For the purpose of this Ordinance, "public place" shall also include any privately owned business property or establishment that is designed for or may be regularly used by more persons other than the owner of the same, but shall not include the private, family residence of any person.

Q. The words "sale(s)", "sell", or "sold" means the exchange, barter, traffic, furnishing, or giving away for commercial purpose of any Alcoholic Beverage by any and all means, by whatever name commonly used to describe the same, by any commercial enterprise or person to another person.

R. "Tribal Court" means the Court of General Jurisdiction of the Choctaw Nation.

S. "Tribal land(s)" shall mean and reference the geographic area that includes all land included within the definition of "Indian country" as established and described by federal law and that is under the jurisdiction of the Choctaw Nation of Oklahoma, including, but not limited to all lands held in trust by the federal government, located within the same, as are now in existence or may hereafter be added to.

T. "Tribal law" means the Constitution of the Choctaw Nation of Oklahoma and all laws, ordinances, codes, resolutions, and regulations now and hereafter duly enacted by the Tribe.

U. "Tribe" shall mean the Choctaw Nation of Oklahoma.

ARTICLE III. SALES OF ALCOHOLIC BEVERAGES.

Section 3.1. Prohibition of the Unlicensed Sale of Alcoholic Beverages.

This Ordinance prohibits the introduction, manufacture, distribution, or sale of Alcoholic Beverages for commercial purposes, other than where conducted by a Licensee in possession of a lawfully issued License in accordance with this Ordinance. The Federal Liquor Laws are intended to remain applicable to any act or transaction that is not authorized by this Ordinance, and violators shall be subject to all penalties and provisions of any and all applicable Federal, Tribal and or State laws.

Section 3.2. License Required.

A. Any and all sales of Alcoholic Beverages conducted upon Tribal lands shall be permitted only where the seller: (i) Holds a current Alcoholic Beverage License, duly issued by the Alcohol Regulatory Authority; and (ii) prominently and conspicuously displays the License on the premises or location designated on the license.

B. A Licensee has the right to engage only in those activities involving Alcoholic Beverages expressly authorized by such License in accordance with this Ordinance.

Section 3.3. Sales for Cash.

All sales of Alcoholic Beverages conducted by any person or commercial enterprise upon Tribal lands shall be conducted on a cash-only basis, and no credit for said purchase and consumption of same shall be extended to any person, organization, or entity, except that this provision does not prohibit the payment of same by use of

credit cards acceptable to the seller (including but not limited to VISA, MasterCard, or American Express).

Section 3.4. Personal Consumption.

All sales of Alcoholic Beverages shall be for the personal use and consumption of the purchaser and or his/her guest(s) of Legal Age. The re-sale of any Alcoholic Beverage purchased within or upon Tribal lands by any person or commercial enterprise not licensed as required by this Ordinance is prohibited.

Section 3.5. Tribal Enterprises.

No employee or operator of a commercial enterprise owned by the Tribe shall sell or permit any person to open or consume any Alcoholic Beverage on any premises or location, or any premises adjacent thereto, under his or her control, unless such activity is properly licensed as provided in this Ordinance.

ARTICLE IV. LICENSING.

Section 4.1. Eligibility.

Only Applicants operating upon Tribal lands shall be eligible to receive a License for the sale of any Alcoholic Beverage under this Ordinance.

Section 4.2. Application Process.

A. The Alcohol Regulatory Authority may cause a License to be issued to any Applicant as is it may deem appropriate, but not contrary to the best interests of the Tribe and its Tribal members. Any Applicant that desires to receive any Alcoholic Beverage License, and that meets the eligibility requirements pursuant to this Ordinance, must apply to the Alcohol Regulatory Authority for the desired class of License. Any such person as may be empowered to make such application, shall: (i) Fully and accurately complete the application provided by the Alcohol Regulatory Authority; (ii) pay the Alcohol Regulatory Authority such application fee as may be required; and (iii) submit such application to the Alcohol Regulatory Authority for consideration.

B. All application fees paid to the Alcohol Regulatory Authority are nonrefundable upon submission of any such application. Each application shall require the payment of a separate application fee. The Alcohol Regulatory Authority may waive fees at its discretion.

Section 4.3. Term and Renewal of Licenses.

A. The term of all Licenses issued under this Ordinance shall be for a period not to exceed two (2) years from the original date of issuance and may be renewed thereafter on a year-to-year basis, in compliance with this Ordinance and any rules and or regulations hereafter adopted by the Alcohol Regulatory Authority.

B. Each License may be considered for renewal by the Alcohol Regulatory Authority annually upon the Licensee's submission of a new application and payment of all required fees. Such renewal application shall be submitted to the Alcohol Regulatory Authority at least sixty (60) days and no more than ninety (90) days prior to the expiration of an existing License. If a License is not renewed prior to its expiration, the Licensee shall cease and desist all activity as permitted under the License, including the sale of any Alcoholic Beverages, until the renewal of such License is properly approved by the Alcohol Regulatory Authority.

Section 4.4. Classes of Licenses.

The Alcohol Regulatory Authority shall have the authority to issue the following classes of Alcoholic Beverage License:

A. "Retail On-Site General License" authorizing the Licensee to sell Alcoholic Beverages at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where Alcoholic Beverages may be sold for consumption on the premises and in the rooms of bona fide registered guests.

B. "Retail On-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer only on the premises or location designated in the License. This class of License includes, but is not limited to, hotels where beer and/or wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.

C. "Retail Off-Site General License" authorizing the Licensee to sell Alcoholic Beverages at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

D. "Retail Off-Site Beer and Wine License" authorizing the Licensee to sell only beer and wine at retail to be consumed by the buyer off of the premises or at a location other than the one designated in the License.

E. "Manufacturer's License" authorizing the Applicant to manufacture Alcoholic Beverages for the purpose of wholesale to retailers on or off Tribal lands, but not authorizing the sale of Alcoholic Beverages at retail.

F. "Temporary License" authorizing the sale of Alcoholic Beverages on a temporary basis for premises or at a location temporarily occupied by the Licensee for a picnic, social gathering, or similar occasion. A Temporary Licenses may not be renewed upon expiration. A new application must be submitted for each such License.

Section 4.5. Application Form and Content.

An application for any License shall be made to the Alcohol Regulatory Authority and shall contain at least the following information:

A. The name and address of the Applicant, including the names and addresses of all of the principal officers, directors, managers, and other employees with primary management responsibility related to the sale of Alcoholic Beverages;

B. The specific area, location, and or premise(s) for which the License is applied;

C. The hours that the Applicant will sell the Alcoholic Beverages;

D. For Temporary Licenses, the dates for which the License is sought to be in effect;

E. The class of Alcoholic Beverage License applied for, as set forth in Section 4.4 herein;

F. Whether the Applicant has an Oklahoma Liquor License; a copy of such License, and any other applicable license, shall be submitted to and retained by the Alcohol Regulatory Authority;

G. A sworn statement by the Applicant to the effect that none of the Applicant's officers, directors, managers, and or employees with primary management responsibility related to the sale of Alcoholic Beverages, have ever been convicted of a felony under the law of any jurisdiction, and have not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance; and

H. The application shall be signed and verified by the Applicant under oath and notarized by a duly authorized representative.

Section 4.6 Action on the Application.

The Alcohol Regulatory Authority shall have the authority to deny or approve the application, consistent with this Ordinance and the laws of the Tribe. Upon approval of an application, the Alcohol Regulatory Authority shall issue a License to the Applicant in a form to be approved from time to time by the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall have the authority to issue a temporary or provisional license pending the foregoing approval process.

Section 4.7 Denial of License or Renewal.

An application for a new License or License renewal may be denied for one or more of the following reasons:

A. The Applicant materially misrepresented facts contained in the application;

B. The Applicant is currently not in compliance with this Ordinance or any other Tribal or Federal laws;

C. Granting of the License, or renewal thereof, would create a threat to the peace, safety, morals, health, or welfare of the Tribe;

D. The Applicant has failed to complete the application properly or has failed to tender the appropriate fee.

E. A verdict or judgment has been entered against or a plea of nolo contendere has been entered by an Applicants' officer, director, manager, or any other employee with primary management responsibility related to the sale of Alcoholic Beverages, to any offense under Tribal, Federal, or State laws prohibiting or regulating the sale, use, possession, or giving away of Alcoholic Beverages. No person who has been convicted of a felony shall be eligible to hold a license.

Section 4.8. Temporary Denial.

If the application is denied solely on the basis of Section 4.7(D), the Alcohol Regulatory Authority shall, within fourteen (14) days of such action, deliver in person or by mail a written notice of temporary denial to the Applicant. Such notice of temporary denial shall: (i) Set forth the reason(s) for denial; and (ii) state that the temporary denial will become a permanent denial if the reason(s) for denial are not corrected within fifteen (15) days following the mailing or personal delivery of such notice.

Section 4.9. Cure.

If an Applicant is denied a License, the Applicant may cure the deficiency and resubmit the application for consideration. Each re-submission will be treated as a new application for License or renewal of a License, and the appropriate fee shall be due upon re-submission.

Section 4.10. Investigation.

Upon receipt of an application for the issuance, transfer, or renewal of a License, the Alcohol Regulatory Authority shall make a thorough investigation to determine whether the Applicant and the premises or location for which a License is applied for qualifies for a License, and whether the provisions of this Ordinance have been complied with. The Alcohol Regulatory Authority shall investigate all matters connected therewith which may affect the public health, welfare, and morals.

Section 4.11. Procedures for Appealing a Denial or Condition of Application.

Any Applicant for a License or Licensee who believes the denial of their License or request for renewal of their License was wrongfully determined may appeal the decision of the Alcohol Regulatory Authority in accordance with the Alcohol Regulatory Authority Rules and Regulations.

Section 4.12. Revocation of License.

The Alcohol Regulatory Authority may initiate action to revoke a License whenever it is brought to the attention of the Alcohol Regulatory Authority that a Licensee:

A. Has materially misrepresented facts contained in any License application;

B. Is not in compliance with this Ordinance or any other Tribal, State, or Federal laws material to the issue of Alcohol licensing;

C. Failed to comply with any condition of a License, including failure to pay taxes on the sale of Alcoholic Beverages or failure to pay any fee required under this Ordinance;

D. Has had a verdict, or judgment entered against, or has had a plea of nolo contendere entered by any of its officers, directors, managers or any employees with primary responsibility over the sale of Alcoholic Beverages, as to any offense under Tribal, Federal or State laws prohibiting or regulating the sale, use, or possession, of Alcoholic Beverages or a felony of any kind.

E. Failed to take reasonable steps to correct objectionable conditions constituting a nuisance on the premises or location designated in the License, or any adjacent area under their control, within a reasonable time after receipt of a notice to make such corrections has been mailed or personally delivered by the Alcohol Regulatory Authority; or

F. Has had their Oklahoma Liquor License suspended or revoked.

Section 4.13. Initiation of Revocation Proceedings.

Revocation proceedings may be initiated by either: (i) the Alcohol Regulatory Authority, on its own motion and through the adoption of an appropriate resolution meeting the requirements of this section; or (ii) by any person who files a complaint with the Alcohol Regulatory Authority. The complaint shall be in writing and signed by the maker. Both the complaint and resolution shall state facts showing that there are specific grounds under this Ordinance, which would authorize the Alcohol Regulatory Authority to revoke the License(s).

Section 4.14. Revocation Hearing.

Any hearing held on any complaint shall be held under such rules and regulations as the Alcohol Regulatory Authority may prescribe. Both the Licensee and the person filing the complaint shall have the right to present witnesses to testify and to present written documents in support of their positions to the Alcohol Regulatory Authority. The Alcohol Regulatory Authority shall render its decision within sixty (60) days after the date of the hearing. The decision of the Alcohol Regulatory Authority shall be final.

Section 4.15. Delivery of License.

Upon revocation of a License, the Licensee shall forthwith deliver their License to the Alcohol Regulatory Authority.

Section 4.16. Transferability of Licenses.

Alcoholic Beverage Licenses shall be issued to a specific Licensee for use at a single premises or location (business enterprise) and shall not be transferable for use by any other premises or location. Separate Licenses shall be required for each of the premises of any Licensee having more than one premises or location where the sale, distribution, or manufacture of Alcoholic Beverages may occur.

Section 4.17. Posting of License.

Every Licensee shall post and keep posted its License(s) in a prominent and conspicuous place(s) on the premises or location designated in the License. Any License posted on a premises or location not designated in such License shall not be considered valid and shall constitute a separate violation of this Ordinance.

ARTICLE V. POWERS OF ENFORCEMENT.

Section 5.1. Alcohol Regulatory Authority.

In furtherance of this Ordinance, the Alcohol Regulatory Authority shall have exclusive authority to administer and implement this Ordinance and shall have the following powers and duties hereunder:

A. To adopt and enforce rules and regulations governing the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands of the Choctaw Nation of Oklahoma;

B. To employ such persons as may be reasonably necessary to perform all administrative and regulatory

responsibilities of the Alcohol Regulatory Authority hereunder. All such employees shall be employees of the Tribe;

C. To issue Licenses permitting the sale, manufacture, distribution, and possession of Alcoholic Beverages within the Tribal lands;

D. To give reasonable notice and to hold hearings on violations of this Ordinance, and for consideration of the issuance or revocation of Licenses hereunder;

E. To deny applications and renewals for Licenses and revoke issued Licenses as provided in this Ordinance;

F. To bring such other actions as may be required to enforce this Ordinance;

G. To prepare and deliver such reports as may be required by law or regulation; and

H. To collect taxes, fees, and penalties as may be required, imposed, or allowed by law or regulation, and to keep accurate books, records, and accounts of the same.

Section 5.2. Right of Inspection.

Any premises or location of any commercial enterprise licensed to manufacture, distribute, or sell Alcoholic Beverages pursuant to this Ordinance shall be open for inspection by the Alcohol Regulatory Authority for the purpose of insuring the compliance or noncompliance of the Licensee with all provisions of this Ordinance and any applicable Tribal laws or regulations.

Section 5.3. Limitation of Powers.

In the exercise of its powers and duties under this Ordinance, agents, employees, or any other affiliated persons of the Alcohol Regulatory Authority shall not, whether individually or as a whole accept any gratuity, compensation, or other thing of value from any Alcoholic Beverage wholesale, retailer, or distributor, or from any Applicant or Licensee.

ARTICLE VI. RULES, REGULATIONS, AND ENFORCEMENT.

Section 6.1. Manufacture, Sale, or Distribution Without License.

Any person who manufactures, distributes, sells, or offers for sale or distribution, any Alcoholic Beverage in violation of this Ordinance, or who operates any commercial enterprise on Tribal lands that has Alcoholic Beverages for sale or in their possession without a proper License properly posted, as required in Section 4.17, shall be in violation of this Ordinance.

Section 6.2. Unlawful Purchase.

Any person who purchases any Alcoholic Beverage on Tribal lands from a person or commercial enterprise that does not have a License to manufacture, distribute, or sell Alcoholic Beverages properly posted shall be in violation of this Ordinance.

Section 6.3. Intent to Sell.

Any person who keeps, or possesses, or causes another to keep or possess, upon his person or any premises within his control, any Alcoholic Beverage, with the intent to sell or to distribute the same contrary to the provisions of this Ordinance, shall be in violation of this Ordinance.

Section 6.4. Sale to Intoxicated Person.

Any person who knowingly sells or serves an Alcoholic Beverage to a person who is visibly intoxicated shall be in violation of this Ordinance.

Section 6.5. Public Conveyance.

Any person engaged in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to consume any Alcoholic Beverage in any such public conveyance shall be in violation of this Ordinance.

Section 6.6. Age of Consumption.

No person under the age of twenty-one (21) years may possess or consume any Alcoholic Beverage on Tribal lands, and any such possession or consumption shall be in violation of this Ordinance.

Section 6.7. Serving Underage Person.

No person shall sell or serve any Alcoholic Beverage to a person under the age of twenty-one (21) or permit any such person to possess or consume any Alcoholic Beverages on the premises or on any premises under their control. Any Licensee violating this section shall be guilty of a separate violation of this Ordinance for each and every Alcoholic Beverage sold or served and or consumed by such an underage person.

Section 6.8. False Identification.

Any person who purchases or who attempts to purchase any Alcoholic Beverage through the use of false, or altered identification that falsely purports to show such person to be over the age of twenty-one (21) years shall be in violation of this Ordinance.

Section 6.9. Documentation of Age.

Any seller or server of any Alcoholic Beverage shall be required to request proper and satisfactory documentation of age of any person who appears to be thirty-five (35) years of age or younger. When requested by a seller or server of Alcoholic Beverages, every person shall be required to present proper and satisfactory documentation of the bearer's age, signature, and photograph prior to the purchase or delivery of any Alcoholic Beverage. For purposes of this Ordinance, proper and satisfactory documentation shall include one or more of the following:

A. Drivers License or personal identification card issued by any state department of motor vehicles or tribal or federal government agency;

B. United States active duty military credentials;

C. Passport.

Any seller, server, or person attempting to purchase an Alcoholic Beverage, who does not comply with the requirements of this section shall be in violation of this Ordinance and subject to civil penalties, as determined by the Alcohol Regulatory Authority.

Section 6.10. General Penalties.

A. Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation, except as provided herein. The Alcohol Regulatory Authority may adopt by resolution a separate written schedule for fines for each type of violation, taking into account the seriousness and threat the violation may pose to the general public health and welfare. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) per violation limitation set forth above. The civil penalties provided for herein shall be in addition to any criminal penalties that may be imposed under any other Tribal, Federal, or State laws.

B. Any person or commercial enterprise determined by the Alcohol Regulatory Authority to be in violation of this Ordinance, including any lawful regulation promulgated pursuant thereto, may be subject to ejection or exclusion from any Gaming Establishment/Facility pursuant to Chapter IV Sections 4.02–4.03 of the Choctaw Nation of Oklahoma Revised Gaming Ordinance and any policies, procedures and guidelines related thereto.

Section 6.11. Initiation of Action.

Any violation of this Ordinance shall constitute a public nuisance. The Alcohol Regulatory Authority may initiate and maintain an action in Tribal Court or any court of competent

jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance. The Alcohol Regulatory Authority shall not be required to post any form of bond in such action.

Section 6.12. Contraband; Seizure; Forfeiture.

All Alcoholic Beverages held, owned, or possessed within Tribal lands by any person, commercial enterprise, or Licensee operating in violation of this Ordinance are hereby declared to be contraband and subject to seizure and forfeiture to the Tribe.

A. Seizure of contraband as defined in this Ordinance shall be done by the Alcohol Regulatory Authority, with the assistance of law enforcement upon request, and all such contraband seized shall be inventoried and maintained by the Alcohol Regulatory Authority pending a final order of the Alcohol Regulatory Authority. The owner of the contraband seized may alternatively request that the contraband seized be sold and the proceeds received there from be maintained by law enforcement pending a final order of the Alcohol Regulatory Authority. The proceeds from such a sale are subject to forfeiture in lieu of the seized contraband.

B. Within ten (10) days following the seizure of such contraband, a hearing shall be held by the Alcohol Regulatory Authority, at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

C. Notice of the hearing of at least ten (10) days shall be given to the person from whom the property was seized and the owner, if known. If the owner is unknown, notice of the hearing shall be posted at the place where the contraband was seized and at other public places on Tribal lands. The notice shall describe the property seized, and the time, place, and cause of seizure, and list the name and place of residence, if known, of the person from whom the property was seized. If upon the hearing, the evidence warrants, or, if no person appears as a claimant, the Alcohol Regulatory Authority shall thereupon enter a judgment of forfeiture, and all such contraband shall become the property of the Choctaw Nation of Oklahoma. If upon the hearing the evidence does not warrant forfeiture, the seized property shall be immediately returned to the owner.

ARTICLE VII. NUISANCE AND ABATEMENT.

Section 7.1. Nuisance.

Any room, house, building, vehicle, structure, premises, or other location where Alcoholic Beverages are sold, manufactured, distributed, bartered, exchanged, given away, furnished, or otherwise possessed or disposed of in violation of this Ordinance, or of any other Tribal, Federal, or State laws related to the transportation, possession, distribution or sale of Alcoholic Beverages, and including all property kept therein, or thereon, and used in, or in connection with such violation is hereby declared to be a nuisance upon any second or subsequent violation of the same.

Section 7.2. Action to Abate Nuisance.

Upon a determination by the Alcohol Regulatory Authority that any such place or activity is a nuisance under any provision of this Ordinance, the Tribe or the Alcohol Regulatory Authority may bring a civil action in the Tribal Court to abate and to perpetually enjoin any such activity declared to be a nuisance. Such injunctive relief may include a closure of any business or other use of the property for up to one (1) year from the date of the such injunctive relief, or until the owner, lessee, or tenant shall: (i) give bond of no less than Twenty-Five Thousand dollars ($25,000) to be held by the Alcohol Regulatory Authority and be conditioned that any further violation of this Ordinance or other Tribal laws will result in the forfeiture of such bond; and (ii) pay of all fines, costs and assessments against him/her/it. If any condition of the bond is violated, the bond shall be forfeit and the proceeds recoverable by the Alcohol Regulatory Authority through an order of the Tribal Court. Any action taken under this section shall be in addition to any other civil penalties provided for in this Ordinance.

ARTICLE VIII. REVENUE AND REPORTING.

Section 8.1. Use and Appropriation of Revenue Received.

All fees, taxes, payments, fines, costs, assessments, and any other revenues collected by the Alcohol Regulatory Authority under this Ordinance, from whatever sources, shall be expended first for the administrative costs incurred in the administration and enforcement of this Ordinance. Any excess funds shall be subject to and available for appropriation by the Alcohol Regulatory Authority to the Tribe for essential governmental and social services related to drug and alcohol education, counseling, treatment, and law enforcement.

Section 8.2. Audit.

The Alcohol Regulatory Authority and its handling of all funds collected under this Ordinance is subject to review and audit by the Tribe as part of the annual financial audit of the Alcohol Regulatory Authority.

Section 8.3. Reports.

The Alcohol Regulatory Authority shall submit to the Tribal Council a quarterly report and accounting of all fees, taxes, payments, fines, costs, assessments, and all other revenues collected and expended pursuant to this Ordinance.

ARTICLE IX. MISCELLANEOUS.

Section 9.1. Severability.

If any provision or application of this Ordinance is found invalid and or unenforceable by a court of competent jurisdiction, such determination shall not be held to render ineffectual any of the remaining provisions or applications of this Ordinance not specifically identified thereby, or to render such provision to be inapplicable to other persons or circumstances.

Section 9.2. Construction.

Nothing in this Ordinance shall be construed to diminish or impair in any way the rights or sovereign powers of the Choctaw Nation of Oklahoma.

Section 9.3. Effective Date.

This Ordinance shall be effective upon certification by the Secretary of the Interior, publication in the **Federal Register** and recorded in the office of the Clerk of the Tribal Court.

Section 9.4. Prior Law Repealed.

Any and all prior enactments of the Choctaw Nation of Oklahoma that are inconsistent with the provisions of this Ordinance are hereby rescinded.

Section 9.5. Amendment.

This Ordinance may only be amended by written resolution approved by the Tribal Council.

[FR Doc. 2010–10284 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2010–N089; 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 June 2, 2010.

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–825573

Applicant: Brian L. Cypher, Bakersfield, California.

The applicant requests a permit to remove/reduce to possession *Opuntia treleasei* (Bakersfield cactus) from Federal lands in conjunction with botanical surveys, voucher, and genetic research throughout the range of each species in California for the purpose of enhancing its survival.

Permit No. TE–097516

Applicant: Thomas P. Ryan, Pasadena, California.

The applicant requests an amendment to an existing permit (March 20, 2007, 72 FR 13121) to take (collect and remove from the wild dead and abandoned eggs, color band; and capture, attach/remove geolocators, monitor, recapture) the California least tern (*Sterna Antillarum browni*) in conjunction with population monitoring and research throughout the range of the species in Los Angeles County, California, for the purpose of enhancing its survival.

Permit No. TE–007907

Applicant: United States Geological Survey, Klamath Falls, Oregon.

The applicant requests an amendment to an existing permit (March 25, 1999, 64 FR 14458) to take (capture, transport, and release) the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostrum*) in conjunction with surveys, population monitoring and life history studies throughout the range of the species in Klamath and Lake Counties, Oregon, for the purpose of enhancing their survival.

Permit No. TE–054011

Applicant: John F. Green, Riverside, California.

The applicant requests an amendment to an existing permit (December 16, 2008, 73 FR 76375) to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–07064A

Applicant: Wesley K. Savage, Allentown, Pennsylvania.

The applicant requests a permit to take (survey, capture, handle, measure, photograph, collect tissue, and release) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) and California tiger salamander (*Ambystoma californiense*); and take (survey, capture, handle, collect tissue, and release) the callippe silverspot butterfly (*Speyeria callippe callippe*) in conjunction with surveys, population monitoring, and genetic research throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–004939

Applicant: Gordon F. Pratt, Riverside, California.

The applicant requests an amendment to an existing permit (January 31, 2003, 68 FR 5037) to take (collect voucher specimens of newly discovered populations) the Quino checkerspot butterfly (*Euphydryas editha quino*), Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*), lotis blue butterfly (*Lycaeides argyrognomon lotis*), El Segundo blue (*Euphilotes battoides allyni*), and the Laguna Mountains skipper (*Pyrgus ruralis lagunae*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–07981A

Applicant: Bruce J. Turner, Eggleston, Virginia.

The applicant requests a permit to take (survey, capture, handle, release, collect, and sacrifice) the Ash meadows pupfish (*Cyprinodon nevadensis mionectes*) and Warm springs pupfish (*Cyprinodon nevadensis pectoralis*) in conjunction with scientific research in Nye County, Nevada, for the purpose of enhancing their survival.

Permit No. TE–166383

Applicant: Michael Westphal, Hollister, California.

The applicant requests an amendment to an existing permit (November 6, 2007, 72 FR 62669) to take (survey, capture, handle, tail clip, and release) the blunt-nosed leopard lizard (*Gamelia silus*) in conjunction with surveys and genetic research throughout the range of the species in San Benito and Fresno Counties, California, for the purpose of enhancing its survival.

Permit No. TE–097845

Applicant: ManTech SRS Technologies Incorporated, Lompoc, California.

The applicant requests an amendment to an existing permit (June 27, 2008, 73 FR 36552), to extend the currently authorized geographic area and take (harass by survey, capture, handle, release, collect, and sacrifice) the

unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with surveys and genetic research within Santa Barbara County, California, for the purpose of enhancing its survival.

Permit No. TE–213726

Applicant: Joelle J. Fournier, San Diego, California.

The applicant requests an amendment to an existing permit (July 7, 2009, 74 FR 32179) to take (handle, band, and remove from the wild dead eggs, chicks, adults, feathers and hatched membranes) the California least tern (*Sterna Antillarum browni*) in conjunction with population monitoring and research at Camp Pendleton Marine Base, San Diego County, California, for the purpose of enhancing its survival.

Permit No. TE–09371A

Applicant: Bureau of Land Management, Las Vegas, Nevada.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species in Clark, Lincoln and Nye Counties, California, for the purpose of enhancing its survival.

Permit No. TE–09389A

Applicant: Michelle E. Giolli, Berkeley, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE–09381A

Applicant: Billy G. Williams, Santa Barbara, California.

The applicant requests a permit to take (capture, handle, and release) the giant kangaroo rat (*Dipodomys ingens*) in conjunction with surveys and population monitoring studies throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE–09375A

Applicant: Laura Ann Eliassen, Bradley, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and population monitoring throughout the range of each species in California for the purpose of enhancing their 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,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. 2010–10225 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children (Advisory Board) will hold its next meeting in Old Town, Maine. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Act of 2004 (IDEA) for Indian children with disabilities.

DATES: The Advisory Board will meet on Monday, May 17, 2010, from 8:30 a.m. to 4:30 p.m. and on Tuesday, May 18, 2010, from 8:30 a.m. to 3:30 p.m. Eastern Time.

ADDRESSES: The meetings will be held at the Indian Island School, 10 Wabanaki Way, Old Town, Maine 04468; telephone number (207) 827–4286.

FOR FURTHER INFORMATION CONTACT: Sue Bement, Designated Federal Officer, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road NW., P.O. Box 1088, Suite 332, Albuquerque, New Mexico 87103; telephone number (505) 563–5274.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2), the BIE is announcing that the Advisory Board will hold its next meeting in Old Town, Maine. The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary-Indian Affairs, on the needs of Indian children with disabilities, as mandated by the IDEA (20 U.S.C. 1400 *et seq.*). The meetings are open to the public.

The following items will be on the agenda:

- Finalize and Review Advisory Board Priorities for 2010–2011.
- Public Comment (via conference call, May 17, 2010, meeting only *).
- Report from Gloria Yepa, Supervisory Education Specialist, BIE, Division of Performance and Accountability.
- Parent Survey Update.
- School Positive Behavior Models Presentation.
- Panel Discussion with Special Education Faculty, General Education Faculty and Related Service Providers from Indian Island School, Old Town, Maine.
- Discussion and Approval of Charter and By-Laws.
- BIE Advisory Board-Advice and Recommendations.

* During the May 17, 2010, meeting, time has been set aside for public comment via conference call from 1:30–2 p.m. Eastern Time. The call-in information is: Conference Number 1–888–387–8686, Passcode 4274201.

Dated: April 27, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–10289 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOS05000 L10100000.PH0000]

Notice of Public Meeting, Southwest Colorado Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Colorado Resource Advisory Council

(RAC) will meet in June, August and October 2010.

DATES: Southwest Colorado RAC meetings will be held on June 4, 2010, in Dolores, Colorado; August 13, 2010, in Gunnison, Colorado; and October 8, 2010, in Ridgway, Colorado.

The meetings will begin at 9 a.m. and adjourn at approximately 4 p.m. A public comment period regarding matters on the agenda will be held at 2:30 p.m.

ADDRESSES: The Southwest Colorado RAC meetings will be held June 4, 2010, at the Anasazi Heritage Center at 27501 Highway 184, Dolores, Colorado 81323; August 13, 2010, at the Holiday Inn Express at 910 E. Tomichi, Gunnison, Colorado; and October 8, 2010, at the Ouray County 4–H Center at 22739 Highway 550, Ridgway, Colorado.

FOR FURTHER INFORMATION CONTACT: Lori Armstrong, BLM Southwest District Manager, 2505 S. Townsend Avenue, Montrose, CO; telephone 970–240–5300; or Erin Curtis, Public Affairs Specialist, 2815 H Road, Grand Junction, CO; telephone 970–244–3097.

SUPPLEMENTARY INFORMATION: The Southwest Colorado RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues in Colorado. Topics of discussion for all Southwest Colorado RAC meetings may include field manager and working group reports, recreation, fire management, land use planning, invasive species management, energy and minerals management, travel management, wilderness, land exchange proposals, cultural resource management, and other issues as appropriate.

These meetings are open to the public. The public may present written comments to the RACs. Each formal RAC meeting will also have time, as identified above, allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited.

Dated: April 23, 2010.

Helen M. Hankins,

State Director.

[FR Doc. 2010–10180 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ponca Tribe of Indians of Oklahoma Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Ponca Tribe of Indians of Oklahoma Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale, and consumption of liquor within the tribal lands. The tribal lands are located in Indian country and this Ordinance allows for possession and sale of alcoholic beverages within their boundaries. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Sherry Lovin, Tribal Government Services Officer, Southern Plains Regional Office, WCD Office Complex, PO Box 368, Anadarko, OK 73005, Telephone: (405) 247–1537, Fax (405) 247–9240; or Elizabeth Colliflower, Office of Indian Services, 1849 C Street NW., Mail Stop 4513–MIB, Washington, DC 20240, *Telephone:* (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Business Committee of the Ponca Tribe of Indians of Oklahoma adopted its Liquor Control Ordinance by Resolution No. 32–061109 on June 11, 2009. The purpose of this Ordinance is to govern the sale, possession, and distribution of alcohol within tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Business Committee of the Ponca Tribe of Indians of Oklahoma adopted its Liquor Control Ordinance by Resolution No. 32–061109 on June 11, 2009.

Dated: April 22, 2010.

Paul Tsosie,

Chief of Staff—Indian Affairs.

The Ponca Tribe of Indians of Oklahoma Liquor Control Ordinance of 2009 reads as follows:

Ponca Tribe of Indians of Oklahoma

Liquor Control Ordinance of 2009

An Ordinance To Authorize and Regulate the Introduction, Possession and Sale of Liquor on Tribal Lands

Be it enacted by the Ponca Business Committee as follows:

Article 1. Title.

This Ordinance shall be known as the "Ponca Tribe of Indians of Oklahoma Liquor Control Ordinance of 2009."

Article 2. Authority.

This Ordinance is enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161), the Constitution of the Ponca Tribe of Indians of Oklahoma, and the Tribe's inherent sovereign authority. Pursuant to Article VIII, Section 2(b) of the Constitution of the Ponca Tribe of Indians of Oklahoma: All law and order ordinances adopted by the Ponca Business Committee pursuant to this Article shall be approved by the Secretary of the Interior before they are effective unless otherwise provided by applicable law.

Article 3. Purpose.

The purpose of this Ordinance is to authorize, regulate, and control the introduction, possession, and sale of Liquor on the Tribal Lands of the Ponca Tribe of Indians of Oklahoma in accordance with Federal law, Oklahoma State law, and the laws of the Ponca Tribe of Indians of Oklahoma. The enactment of this Ordinance will enhance the ability of the Tribal government to control all Liquor related activities within the jurisdiction of the Tribe. This Ordinance is enacted in conjunction with the laws of the State of Oklahoma applicable to the sale and distribution of Liquor pursuant to 18 U.S.C. 1161.

Article 4. Scope.

In order to protect the health, safety, and social welfare of the members of the Ponca Tribe of Indians of Oklahoma and the patrons of businesses located on Tribal Lands, and be consistent with the principles enunciated by the United States Supreme Court in *United States* v. *Montana,* 101 S. Ct. 1245 (1981), the Tribe, as an exercise of sovereign authority and self-determination, has enacted this Ordinance to regulate the

introduction, possession, and sale of Liquor on Tribal Lands. This Ordinance applies to all Tribal Lands, as defined herein. This Ordinance shall extend to all Persons, as defined herein, receiving or requiring Licenses hereunder, or doing business on Tribal Lands, or having significant contacts within Tribal Lands, or residing within Tribal Lands, or entering into or coming within Tribal Lands, or consuming, possessing, manufacturing, or distributing Liquor within Tribal Lands. All such Persons shall be deemed to have consented to the jurisdiction of the Tribe and to the provisions of this Ordinance, the operation thereof, and to the jurisdiction and authority of the Tribe, and shall, by virtue of such actions, be deemed to have waived all defenses to the jurisdiction and venue of the Tribe, the Tribal Gaming Commission, and the Tribal Court, notwithstanding that such Persons may be of non-Indian descent or character.

Article 5. Definitions.

As used in this Ordinance, the following definitions shall apply:

(a) "*Alcohol*" has the same meaning as the term "Liquor" as herein defined in this Ordinance.

(b) "*Beer*" means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent of Alcohol by volume. For the purpose of this Ordinance, any such beverage, including ale, stout, and porter, containing more than four percent of Alcohol by weight shall be referred to as "strong Beer."

(c) "*Gaming Facility*" means a building or buildings and accessory improvements located on Tribal Land, as defined herein, and used in the operation of Class II or Class III Gaming, as applicable, including all land upon which the building or buildings are situated that is appropriated for the use of the Gaming Facility, together with all parts of the Gaming Site and all related appurtenances and fixtures, including any ancillary or related hotel, resort or entertainment facilities.

(d) "*Gaming Site*" or "*Site*" means the tract or tracts of Tribal Land upon which a Gaming Facility is located.

(e) "*License*" means a liquor license duly issued by the Tribal Gaming Commission pursuant to this Ordinance.

(f) "*Liquor*" means the four varieties of liquor herein defined (Alcohol, Spirits, Wine and Beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing Alcohol, Spirits, Wine or Beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than 1 percent of Alcohol by weight shall be conclusively deemed to be intoxicating.

(g) "*Management Contractor*" means a Person (other than the Tribe) holding a management contract entered into pursuant to 25 U.S.C. 2710(d)(9) or 2711 and approved by the National Indian Gaming Commission pursuant to Part 532 (Approval of Management Contracts), Title 25, Code of Federal Regulations.

(h) "*Ordinance*" means this Ponca Tribe of Indians of Oklahoma Liquor Control Ordinance of 2009.

(i) "*Patron*" means a person visiting premises licensed pursuant to this Ordinance and having the intent to purchase any goods or services for sale to the general public therein.

(j) "*Person*" means any natural person, partnership, corporation, limited liability company, association, other statutory business entity and any sovereign. The term also includes any Tribal Gaming Operations Authority duly constituted pursuant to the laws of the Tribe.

(k) "*Public Place*" means any location or premises on Tribal Lands to which the general public has unrestricted access.

(l) "*Sale and Sell*" means any exchange, barter, gift or traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of Liquor, or of any liquid known or described as Beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any Person to any Person and also includes giving away Liquor, Wine, Beer, or Spirits.

(m) "*Spirits*" means any beverage, which contains Alcohol obtained by distillation, including wines exceeding 17 percent of Alcohol by weight.

(n) "*State*" means the State of Oklahoma and any of its agencies or instrumentalities.

(o) "*Tribal Business Committee*" means the Ponca Business Committee as described in the Constitution of the Ponca Tribe of Indians of Oklahoma.

(p) "*Tribal Court*" means a court duly constituted under the Constitution of the Ponca Tribe of Indians of Oklahoma, or so long as there be no such court, the Court of Indian Offenses sitting in Anadarko, Oklahoma, together with all tribunals provided for the appeal of the decisions of such court under Federal law.

(q) "*Tribal Gaming Commission*" or "*Commission*" means the Ponca Tribal Gaming Commission established pursuant to the Ponca Tribe of Indians of Oklahoma Gaming Ordinance for the purpose of performing regulatory oversight and to monitor compliance with tribal, Federal, and State regulations, including this Ordinance.

(r) "*Tribal Gaming Operation*" means each economic unit that is licensed by the Tribe and owned, operated and managed through a Tribal Gaming Operations Authority duly constituted by the Tribal Business Committee or by a Management Contractor.

(s) "*Tribal Gaming Operations Authority*" means a profit-making business unit of the Tribe pursuant to the laws of the Tribe and conducting Gaming on Tribal Lands under the authority of licenses granted by the Tribal Gaming Commission.

(t) "*Tribal Lands*" means all land over which the Tribe exercises governmental power and that is either held in trust by the United States for the benefit of the Tribe or individual members of the Tribe and located within the boundaries of the Ponca Tribe's original reservation as established in the Treaty of October 21, 1867, as well as the 814.84 acres of land held in trust, for the Ponca Tribe, at the old Chilocco Indian School Reserve pursuant to Public Law 99–283 (S 1684); May 1, 1986.

(u) "*Tribal Manager*" means a natural person hired by the Tribal Gaming Operations Authority as a regular employee of the Tribe with overall management responsibility for a Tribal Gaming Operation and in the case of a Tribal Gaming Operations Authority each member of the Board of Trustees thereof.

(v) "*Tribe*" means the Ponca Tribe of Indians of Oklahoma which is recognized by the United States Secretary of the Interior as eligible for the special programs and services provided by the United States to Indians because of their status as Indians and recognized as possessing powers of self-government.

(w) "*Wine*" means any Liquor obtained by fermentation of any fruits (grapes, berries, apples, *etc.*), or fruit juice and containing not more than 17 percent of Alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of Alcohol by weight.

Article 6. Powers of Enforcement.

(A) The Tribal Gaming Commission is hereby delegated primary regulatory authority over the subject matter of this Ordinance. The Tribal Gaming Commission, in furtherance of this Ordinance, has the following powers and duties:

(1) To promulgate and publish such reasonable regulations regarding the sale of Liquor pursuant to this Ordinance as the Tribal Gaming Commission may from time to time deem to be appropriate;

(2) To employ managers, accountants, security personnel, inspectors, and other such persons as may be reasonably necessary to allow the Tribal Gaming Commission to perform its functions, and such employees shall be tribal employees;

(3) To issue Licenses permitting introduction, possession, and sale of Liquor on Tribal Lands;

(4) To hold hearings on violations of this Ordinance or for the issuance, suspension, or revocation of Licenses for the sale of Liquor on Tribal Lands issued pursuant to this Ordinance;

(5) To bring suit in the Tribal Court in the name of the Tribe to enforce this Ordinance, as the Tribal Gaming Commission may deem to be necessary;

(6) To seek damages and collect civil fines imposed by the Tribal Gaming Commission for violations of this Ordinance;

(7) To make reports, as may be required, of any violations under this Ordinance;

(8) To collect License fees and fines set by the Tribal Gaming Commission under this Ordinance, and to keep accurate records, books and accounts of all such receipts; and

(9) To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance.

(B) Civil Enforcement. The Tribal Gaming Commission may take any one or a combination of the following actions with respect to any person who violates any provision of this Ordinance:

(1) Impose a civil fine not to exceed Five Hundred Dollars ($500) for each violation, and if such violation is a continuing violation, for each day of such violation;

(2) Suspend or revoke any License issued by the Tribal Gaming Commission; and

(a) The Tribal Gaming Commission may suspend or revoke a License for reasonable cause upon notice and hearing by the Tribal Gaming Commission at which the licensee shall be given at least twenty (20) days' prior written notice, served upon the licensee by first-class mail or certified mail return receipt requested, at the notice address stated in the licensee's most recent application, and stating the date and nature of the violation, the date, time and place of the hearing and the section or sections of this Ordinance that have been violated.

(b) At such hearing, the licensee shall have the right to be represented by an attorney at law licensed in any state and shall have the opportunity to respond to any charges against it, to present evidence under oath, to cross-examine all witnesses and otherwise to demonstrate why the License should not be suspended or revoked. At such hearings, the Federal Rules of Evidence in effect at the time of the hearing shall be applied, hearsay evidence shall in any event not be competent, and the burden of persuasion shall be that of the Tribal Gaming Commission, by a preponderance of the evidence.

(c) A decision of the Tribal Gaming Commission pursuant to such hearing may be appealed to the Tribal Court within thirty (30) days of such decision.

(3) Bring an action in the Tribal Court for imposition of civil fines and remedial relief, including (but not limited to):

(a) Restriction on the sale of liquor on Tribal Lands;

(b) Suspension, revocation, or termination of the License and issuing an order suspending further commercial activities on Tribal Lands;

(c) In the case of any non-member of the Tribe, expulsion and debarment of such persons from Tribal Lands;

(d) Collection of any unpaid fees together with interest at the rate of two percent (2%) per month or fraction of a month; or

(e) Execution of any nonexempt property of a violator located within the exterior boundaries of Tribal Lands.

(C) Due Process Procedures for Imposition of Fine or Remedial Relief.

(1) Imposition of fines or remedial relief by the Tribal Gaming Commission under Article 6(b)(3) shall require reasonable cause upon notice and a hearing held by the Tribal Gaming Commission at which the licensee shall be given at least twenty (20) days' prior written notice, served upon the licensee by first-class mail or certified mail return receipt requested, at the notice address stated in the licensee's most recent application, and stating the date and nature of the violation, the date, time and place of the hearing and the section or sections of this Ordinance that have been violated.

(2) At such hearing, the licensee shall have the right to be represented by an attorney at law licensed in any state and shall have the opportunity to respond to any charges against it, to present evidence under oath, to cross-examine all witnesses and otherwise to demonstrate why such fine or remedial relief should not be imposed. At such hearing, the Federal Rules of Evidence in effect at the time of the hearing shall be applied, hearsay evidence shall in any event not be competent, and the burden of persuasion shall be that of the Tribal Gaming Commission, by a preponderance of the evidence.

(3) A decision of the Tribal Gaming Commission pursuant to such hearing may be appealed to the Tribal Court within thirty (30) days of such decision.

(D) Tribal Court Jurisdiction.

The Tribal Court shall have jurisdiction over any civil action brought by the Tribal Gaming Commission under this Ordinance, any appeal of a decision of the Tribal Gaming Commission regarding suspension, revocation, fine, or remedial relief arising out of a violation of this Ordinance, and also shall have the authority to impose any and all sanctions that may be imposed by the Tribal Gaming Commission pursuant to this Ordinance. Upon a finding that a violation of this Ordinance has occurred, the Tribal Court may impose a civil penalty as provided in this Article for each separate violation in addition to any or all actual damages, administrative costs, court costs, and attorneys fees.

(E) Inspection Rights.

The Public Places on or within which Liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated thereto.

(F) Limitations on Powers.

In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members shall not accept gratuity, compensation, or other things of value from any Liquor producer, wholesaler, retailer, or distributor or from any Liquor licensee, other than the License fees and penalties established pursuant to this Ordinance.

(G) Prohibitions.

(1) In any proceeding under this Article, proof of one unlawful sale or distribution of Liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping Liquor for sale, selling Liquor, or distributing Liquor in violation of this Ordinance.

(2) Any Person who shall sell or offer for sale or distribute or transport in any manner any Liquor in violation of this

Ordinance shall be guilty of violation of this Ordinance. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of Liquor not purchased or otherwise acquired at any retail establishment on Tribal Lands and intended only by members of the Tribe for their personal or other non-commercial use. The possession, transportation, sale, consumption, or other disposition of Liquor outside of Tribal Lands shall be governed solely by the laws of the State of Oklahoma or other sovereign having jurisdiction.

(3) Any Person who, in a Public Place, buys Liquor from any Person other than at a valid holder of a Liquor License issued by the Tribal Gaming Commission pursuant to this Ordinance, shall be guilty of a violation of this Ordinance.

(4) Any Person who shall sell or offer for sale or distribute or transport in any manner, any Liquor in violation of this Ordinance, or who shall operate or shall have Liquor in his possession with intent to sell or distribute without a License or permit shall be guilty of a violation of this Ordinance.

(5) No Person under the age of twenty-one (21) shall consume, acquire or have in his/her possession any Liquor. Any Person violating this section in a Public Place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed, acquired, or possessed.

(6) Any Person who, in a Public Place, shall sell or provide any Liquor to any Person under the age of twenty-one (21) shall be guilty of a violation of this Ordinance for each such sale or drink provided.

(7) Any Person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain Liquor shall be guilty of a violation of this Ordinance, provided that corroborative testimony of a witness other than the minor shall be a requirement of a finding of a violation of this Ordinance.

(8) Any Person who attempts to purchase Liquor through the use of a false or altered identification shall be guilty of a violation of this Ordinance.

(9) Possession of Alcohol that has been brought by a Patron into a Public Place shall result in ejection of a Patron from the Public Place.

(10) Liquor that is possessed contrary to the terms of this Ordinance are declared to be contraband. Any tribal agent, employee or officer who is authorized by the Commission to enforce this Ordinance shall have the authority to, and shall, seize all contraband. Any officer seizing contraband shall preserve the contraband in accordance with applicable law of the Tribe or State law. Upon being found in violation of this Ordinance by the Tribal Gaming Commission, the Person shall forfeit all right, title, and interest in the items seized and they shall become the property of the Tribe.

(H) Penalties for Violations of the Ordinance.

Any Person guilty of a violation of this Ordinance shall be liable to pay the Tribal Gaming Commission a civil fine not to exceed $500 per violation. In assessing the amount of such civil fine, the Tribal Gaming Commission may consider the licensee's record of violations of this Ordinance involving the sale of Liquor, extenuating circumstances found upon the basis of credible evidence presented by the licensee at a hearing, and any adequacy found by the Tribal Gaming Commission of assurances of the licensee's future compliance with this Ordinance with respect of the sale of Liquor and otherwise. Any person found guilty of a violation of this Ordinance may be assessed any costs associated with the collection and enforcement of the civil fine, including court costs and attorneys fees.

Article 7. Sale of Liquor.

(A) Licenses Required. No sale of Liquor shall be made on or within a Public Place without a Liquor License issued by the Tribal Gaming Commission pursuant to this Ordinance.

(B) Sales for Cash. All Liquor sales at on Tribal Lands shall be on a cash only basis and no credit shall be extended to any Person, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit cards or credit cards issued by any financial institution.

(C) Sale for Personal Consumption. All sales shall be for the on-premise personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21).

(D) Resale of any Liquor purchased on Tribal Land. Any Person who is not licensed pursuant to this Ordinance who purchases Liquor on Tribal Lands and resells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to civil fines of up to five hundred dollars ($500.00) per sale, as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Article 8. Licensing.

(A) No Person subject to the jurisdiction of the Tribe shall sell, barter, deal in or give away any Liquor on Tribal Lands unless duly licensed to do so by the Tribal Gaming Commission pursuant to this Ordinance.

(B) Any Person desiring to sell Liquor on Tribal Lands shall before doing so apply to the Tribal Gaming Commission for a License to sell Liquor. Such application shall be made on forms prescribed by the Tribal Gaming Commission or, if no such forms have at the time of such application yet been prescribed, by letter providing all of the information required in respect of such application under Article 8(d) of this Ordinance, submitted together with payment of the non-refundable application fee. Such fee shall be in an amount to be prescribed by the Tribal Gaming Commission by rule.

(C) State Licensing. No Person shall be allowed or permitted to sell Liquor on Tribal Lands unless such Person is also duly licensed to sell and possess Liquor under the applicable laws of the State of Oklahoma.

(D) Application. Any Person applying for a License to sell Liquor on Tribal Lands shall complete and submit an application provided for this purpose by the Tribal Gaming Commission and pay such application fee as under this Ordinance may be set from time-to-time by the Tribal Gaming Commission for this purpose. An incomplete application will not be considered. License fees submitted pursuant to this Ordinance shall neither be refundable nor pro-ratable. Such application shall at a minimum require the following:

(1) Satisfactory proof that the applicant is duly licensed by the State to sell Liquor;

(2) Satisfactory completion of a background investigation, including, but not limited to, a determination that the applicant is of good character and reputation and that the applicant is financially responsible;

(3) The description and location of the Public Place in which the Liquor is to be sold and proof that the applicant is entitled to use such premises for such purposes for the duration of the time period of the License;

(4) Agreement by the applicant to accept and abide by all conditions of the License, including consent to the jurisdiction and regulatory authority of the Tribe;

(5) Payment of a fee established by the Commission; and

(6) Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer,

shareholder, or director of the applicant, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State.

(E) Kinds of Licenses-Fees. The Licenses issued by the Tribal Gaming Commission and the biannual fees therefore shall be as follows:

(1) On-Premise Retail License—$2000.00. For retail on-premise sale of Liquor for on-premise consumption.

(2) Caterer License—$2000.00. For sale of Liquor for on-premise consumption at catered events.

(3) Annual Special Event License—$100.00. For sale of Liquor for on-premise consumption at a special event.

(4) Hotel/Club Beverage License—$2000.00 For sale of Liquor for on-premise consumption on hotel or club premises. Each License granted shall be valid for two (2) years from the date of issuance plus or minus any such period of less than one year as may be necessary to conform to a date for the renewal of all Licenses issued pursuant to this Ordinance, as established from time to time by rule of the Tribal Gaming Commission. Pursuant to the authority granted to the Tribal Gaming Commission under this Ordinance, the Tribal Gaming Commission may revise these License types and fees as appropriate from time to time at their discretion. The Tribal Gaming Commission may also assess an administrative fee for processing each License application, which shall be in addition to the License fee.

(F) Issuance of License. The Tribal Gaming Commission may issue a License if it believes that:

(1) the issuance of such a License would be in the best interest of the Tribe; and

(2) the applicant is competent, eligible for a License under this Ordinance, and has demonstrated a substantial working understanding of this Ordinance and any other relevant State, Federal or Tribal laws applicable to the applicant's sale of Liquor on Tribal Lands. Licensure under this Ordinance is a privilege, not a right, and the decision to issue any License rests in the sole discretion of the Tribal Gaming Commission. No member of the Tribal Gaming Commission shall be a part of the decision making process of an application submitted by a Tribal Gaming Commission member or any Person in the immediate family of a Tribal Gaming Commission member.

(G) Conditions of License.

(1) Any License issued under this Ordinance shall be subject to such reasonable conditions as the Tribal Gaming Commission shall fix, including, but not limited to, the following:

(a) Term of License. Each License shall be for a term of two years from the date of issuance plus or minus any such period of less than one year as may be necessary to conform to a date for the renewal of all Licenses issued pursuant to this Ordinance, as established from time to time by rule of the Tribal Gaming Commission.

(b) Temporary License. The Tribal Gaming Commission may grant a temporary permit for the sale of Liquor for a period not to exceed three days to any Persons applying for the same in connection with a tribal or community activity provided that the application requirements under this Ordinance have been satisfied. Each temporary permit issued shall specify the type of Liquor to be sold, the time, date and location permitted. A separate fee, set by the Tribal Gaming Commission, will be assessed for temporary permits.

(c) Renewal of License. A licensee may renew its License(s) for successive periods of no more than 24 calendar months if it has complied in full with this Ordinance and has maintained all other licenses required by applicable law, provided however, the Tribal Gaming Commission may refuse to renew a License if it finds that doing so would not be in the best interests of the Tribe or the health and safety of Patrons. This subparagraph (c) shall not apply to Temporary Licenses issued under subparagraph (b) which shall not be subject to renewal.

(d) Liquor shall be sold, served, disposed of, delivered, or given to any Person and consumed on the licensed premises in conformity with the hours and days prescribed by the laws of the State of Oklahoma and in accordance with the hours fixed by the Tribal Gaming Commission.

(e) All acts and transactions under authority of a License shall be in conformity with State and Federal law, and shall be in accordance with this Ordinance and any License issued pursuant to this Ordinance.

(H) Transferability of Licenses. Unless authorized in writing by the Tribal Gaming Commission, a License issued by the Tribal Gaming Commission shall not be transferable Person to Person or place to place and may only be utilized by the Person in whose name it was issued.

Article 9. Licensee Prohibitions.

(A) No licensee shall sell Liquor for consumption off the licensed premises.

(B) No Person under the age of twenty-one (21) shall be sold, served, delivered, given, or allowed to consume Liquor on a licensed premises.

(1) In any alleged violation arising out of sale of Liquor to a Person under the age of twenty one years, it shall be an affirmative defense that the licensee reasonably relied upon an apparently valid form of identification specified in Article 9(b).

(2) Whenever it reasonably appears to a licensee's employee duly dispensing Liquor pursuant to this Ordinance that a Person seeking to purchase Liquor is under the age of (27) years, the prospective purchaser shall not be served unless such Person exhibits at the time and place of sale, apparently and facially valid forms of the following documentary forms of identification which shows his/her correct age and bears his/her signature and photograph:

(a) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(b) United States Active Duty Military identification card;

(c) United States Passport; or

(d) A foreign passport accompanied by an entrance visa issued by the United States Department of State.

(C) No licensee shall allow Liquor to be served by a barkeeper, wait staff or other Person employed by or working in a licensed premises who is under the age of twenty-one (21).

(D) No Liquor shall be sold at any form of a discounted price such as (as non-limiting examples) two for one during certain times, half price during certain times, or consumption promoted by free food or by other complimentary goods or services provided in the vicinity of an in conjunction with the sale of Liquor.

(E) No Liquor shall be given away.

(F) No Person licensed to sell Liquor shall permit any gambling to occur on the licensed premises other than gambling permitted by the Gaming Ordinance of the Tribe at a Gaming Facility and pursuant to appropriate licenses granted therefore.

(G) No licensee shall serve Liquor to any Patron or other Person who is visibly intoxicated or to any employee of the licensee. All licensees shall be privileged to refuse to serve Liquor to any Patron.

Article 10. Taxes and Collection of Fees; Records.

(A) The Tribe hereby levies a tax of 3% (three percent) on each retail sale of Liquor on Tribal Lands. The Tribe reserves the right to adjust such tax from time to time by resolution as may be required and will provide written notice to the Tribal Gaming Commission of any changes in the amount of such retail tax.

The tax imposed by this section shall apply to all retail sales of Liquor on Tribal Lands. Such tax shall be in addition to any required Oklahoma State Alcohol tax on retail sales occurring on Tribal Lands.

(B) Payment of Retail Liquor Tax to the Tribe. All tax from the retail sale of Liquor on Tribal Lands under this Ordinance shall be collected by licensees and paid to the Ponca Tribal Tax Commission.

(C) Taxes Due; Returns. All fees upon the retail sale of Liquor shall be due and payable by licensees to the Ponca Tribal Tax Commission on the first day of the month following the end of each calendar quarter during the term of the License. Past due taxes shall accrue interest at two percent (2%) per month or fraction thereof, which interest shall be deemed to be an addition to the tax. With each payment of the tax, the licensee shall submit on forms prescribed by the Ponca Tribal Tax Commission, a return duly completed and certified as accurate.

(D) Licensee's Duty to Keep Records; Tribal Gaming Commission's Prerogative to Audit Records.

(1) Each licensee shall keep reasonable written records of its purchase of Liquor at wholesale, its sale of Liquor at retail and its payment of taxes imposed under this Ordinance. Such records shall conform to generally accepted accounting principles and to any regulations from time to time duly promulgated by the Tribal Gaming Commission, pursuant to this Ordinance.

(2) Such records shall in any event include complete files of records of original entry, journals upon which all relevant transactions are recorded, and bank statements reflecting all purchases and sales of Liquor.

(3) By the act of applying for a License to sell Liquor under this Ordinance, the applicant shall by operation of law be deemed to have irrevocably agreed to submit to the Tribal Gaming Commission and Ponca Tribal Tax Commission for review or audit the licensee's books and records relating to the sale of Liquor. Said review or audit may be done periodically by the Tribal Gaming Commission or Ponca Tribal Tax Commission—through its agents or employees whenever in the discretion of the Tribal Gaming Commission or Ponca Tribal Tax Commission such a review or audit is necessary or otherwise appropriate to verify the accuracy of reports.

(4) The Tribal Business Committee and the Ponca Tribal Tax Commission shall have access to all written records required to be maintained by Licensees under this Ordinance.

(E) Disposition of Funds Collected by the Tribal Gaming Commission in respect of the Licensing and Sale of Liquor.

(1) The gross proceeds collected by the Tribal Gaming Commission from the issuance of Licenses for the sale of Liquor and from proceedings involving violations of this Ordinance shall be distributed to the Tribal Gaming Commission for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance, including, but not limited to, reasonable reserves in aggregate amounts of up to the full amount of the annual budget of the Tribal Gaming Commission plus $300,000. and any surplus over such amounts and reserve—shall as received be promptly paid over to the Ponca Tribal Tax Commission for use for the purposes of the Tribe.

(2) The Tribal Gaming Commission shall provide an annual report to the Tribal Business Committee setting forth an accounting of the funds received and expended under this Ordinance.

Article 11. Abatement.

(A) Any Public Place where Liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

(B) The Tribal Gaming Commission by its representative duly authorized by resolution by the Tribal Gaming Commission shall have standing, power and authority to institute and prosecute in an action in the Tribal Court or at the election of the Tribal Gaming Commission and subject to the jurisdictional rules that may apply, in the Federal District Court for the Western District of Oklahoma, a civil action to abate and enjoin any nuisance declared by the Tribal Gaming Commission under this Ordinance.

(1) Upon establishment that probable cause exists to find that a nuisance exists, the court may grant restraining orders, temporary injunctions, and permanent injunctions in the case as in other injunction proceedings. Upon final judgment against the defendant, the court may also order the room, structure, or place closed for a period of one year or (if a lesser period is warranted) until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum but not less than ten thousand dollars $10,000, payable to the Tribal Gaming Commission,

(a) The bond must be, in form acceptable to the Tribal Gaming Commission, and

(b) conditioned that Liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provision of this Ordinance, and that the defendant will pay all fines, costs and damages assessed against him/her for any violation of this Ordinance.

(2) The Commission will return the bond to the owners, lessee, tenant, or occupant one year after submission of such bond to the Tribal Gaming Commission if the Commission has determined that there have been no further violations of the Ordinance within such period by the defendant.

(3) If any conditions of the bond are violated, the whole amount may be forfeit and available for the use of Tribal Gaming Commission.

(4) In all cases where any Person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution, and sale of Liquor:

(a) An action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance; and

(b) Proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article 12. Severability.

If any provision or application of this Ordinance is determined by review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other Persons or circumstances. Any and all prior tribal laws, resolutions or statutes of the Ponca Tribe of Indians of Oklahoma which are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed to the extent inconsistent with this Ordinance.

Article 13. Application of 18 U.S.C. 1161.

Federal law requires that any authorization for the sale of Liquor must be in conformity with the laws of the State and approved by an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country.

All acts and transactions under this Ordinance shall be in conformity with Federal law and the laws of the State of Oklahoma as applicable.

Article 14. Effective Date.

This Ordinance shall be effective after the Secretary of the Interior certifies the Ordinance and on the date it is published in the **Federal Register**.

Article 15. Sovereign Immunity.

Nothing contained in this Ordinance is intended to, nor does it in any way, limits, alters, restricts, or waives the sovereign immunity of the Tribe or its agencies and instrumentalities from unconsented suit or action of any kind.

Article 16. Duration.

This Ordinance shall be perpetual until repealed or amended by the Ponca Tribe of Indians of Oklahoma.

Article 17. Limitations.

Notwithstanding anything contained herein to the contrary, until this Ordinance is further amended as provided in Article 16, no sale of Liquor shall be permitted on Tribal Lands other than at a Gaming Facility.

[FR Doc. 2010–10251 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW164359]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Lands Leasing Act of 1920, as amended, and Bureau of Land Management (BLM) regulations, the BLM received a petition for reinstatement from Western American Resources, LLC and East Resources, Inc. for competitive oil and gas lease WYW164359 for land in Goshen County, WY. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Julie L. Weaver, Chief, Branch of Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $163 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW164359 effective October 1, 2009, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease affecting the lands.

Julie L. Weaver,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2010–10294 Filed 4–30–10; 8:45 am]

BILLING CODE 4310–22–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Third Review)]

Iron Construction Castings From Brazil, Canada, and China

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty order on "heavy" iron construction castings from Brazil, the antidumping duty order on "heavy" iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on "heavy" iron construction castings from Brazil, the antidumping duty order on "heavy" iron construction castings from Canada, and the antidumping duty orders on iron construction castings from Brazil and China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 2, 2010. Comments on the adequacy of responses may be filed with the Commission by July 16, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The Department of Commerce issued antidumping duty orders on imports of "heavy" and "light" iron construction castings from Canada on March 5, 1986 (51 FR 7600) and from Brazil and China on May 9, 1986 (51 FR 17220). On May 15, 1986, Commerce issued a countervailing duty order on imports of "heavy" iron construction castings from Brazil (51 FR 17786). On September 23, 1998, Commerce issued the final results of a changed circumstance review concerning iron construction castings from Canada, in which the antidumping duty order with respect to "light" castings was revoked (63 FR 50881). Following full first five-year reviews by Commerce and the Commission, effective November 12, 1999, Commerce issued a continuation of the countervailing duty order on "heavy" iron construction castings from Brazil, a continuation of the antidumping duty order on "heavy" iron construction castings from Canada, and a continuation of the antidumping duty orders on "heavy" and "light" iron construction castings from Brazil and China (64 FR 61590–61592). Following expedited second five-year reviews by Commerce and the Commission, effective June 29, 2005, Commerce issued a second continuation of the subject orders (70 FR 27326). The Commission is now conducting third

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–215, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Brazil, Canada, and China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations concerning iron construction castings from Brazil, Canada, and China, the Commission found two separate *Domestic Like Products:* "heavy" and "light" iron construction castings.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, its full first five-year review determinations, and its expedited second five-year review determinations, the Commission found two *Domestic Industries:* (1) all domestic producers of "heavy" iron construction castings and (2) all domestic producers of "light" iron construction castings.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register.** Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response To This Notice of Institution:

Please provide the requested information separately for each *Domestic Like Product/Domestic Industry,* as defined by the Commission in its original and previous review determinations, and for each of the products identified by Commerce as *Subject Merchandise.* If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industries* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industries.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Products.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Products* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Products* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product(s),* provide the following information on your firm's operations on each product during calendar year 2009, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce each *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of each *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of each *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of each *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Products* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country(ies)* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Products* produced in the United States, *Subject Merchandise* produced in the *Subject Country(ies),* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Products* and *Domestic Industries;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9813 Filed 4–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–125 (Third Review)]

Potassium Permanganate From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on potassium permanganate from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on potassium permanganate from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 2, 2010. Comments on the adequacy of responses may be filed with the Commission by July 16, 2010. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On January 31, 1984, the Department of Commerce issued an antidumping duty order on imports of potassium permanganate from China (49 FR 3897). Following first five-year reviews by Commerce and the Commission, effective November 24, 1999, Commerce issued a continuation of the antidumping duty order on imports of potassium permanganate from China (64 FR 66166). Following second five-year reviews by Commerce and the Commission, effective June 21, 2005, Commerce issued a continuation of the antidumping duty order on imports of potassium permanganate from China (70 FR 35630). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Like Product* as potassium permanganate co-extensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first five-year review determination, and its expedited second five-year determination, the Commission defined the *Domestic Industry* as all domestic producers of potassium permanganate.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–216, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 5000 E Street, SW., Washington, DC 20436.

days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or

trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Pro*duct produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 22, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9814 Filed 4–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–101 (Third Review)]

Greige Polyester/Cotton Printcloth From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on greige polyester/cotton printcloth from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on greige polyester/cotton printcloth from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 2, 2010. Comments on the adequacy of responses may be filed with the Commission by July 16, 2010. For further information concerning the conduct of this review and rules of general application, consult the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–214, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On September 16, 1983, the Department of Commerce issued an antidumping duty order on imports of greige polyester/cotton printcloth from China (48 FR 41614). Following first five-year reviews by Commerce and the Commission, effective April 26, 1999, Commerce issued a continuation of the antidumping duty order on imports of greige polyester/cotton printcloth from China (64 FR 42661, August 5, 1999). Following second five-year reviews by Commerce and the Commission, effective June 27, 2005, Commerce issued a continuation of the antidumping duty order on imports of greige polyester/cotton printcloth from China (70 FR 36927). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as greige polyester/cotton printcloth containing 50 percent or more of cotton by value. The Commission also stated that domestic greige polyester/cotton printcloth that was greater than 50 percent by weight cotton was equivalent to greige polyester/cotton printcloth that was in chief value cotton and examined the Domestic Industry that produced greige polyester/cotton printcloth of chief weight cotton in making its determination. In its expedited first five-year review determination, the Commission defined the Domestic Like Product the same as Commerce's revised scope, i.e., griege polyester/cotton printcloth of chief weight cotton. In its full second five-year review determination, the Commission defined the Domestic Like Product as printcloth that was chief weight cotton, plus 50/50 printcloth, including 50/50 product that was chief weight polyester.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of greige polyester/cotton printcloth containing 50 percent or more of cotton by value but examined the Domestic Industry that produced greige polyester/cotton printcloth of chief weight cotton. In its expedited first five-year review determination, the Commission defined the Domestic Industry as producers of greige polyester/cotton printcloth of chief weight cotton. In its full second five-year review determination, the Commission defined the Domestic Industry as all domestic producers of chief weight cotton printcloth and 50/50 printcloth.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be

deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2004.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of

U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2004, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: April 22, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9815 Filed 4–30–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082–1083 (Review)]

Chlorinated Isocyanurates From China and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on chlorinated isocyanurates from China and Spain.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 2, 2010. Comments on the adequacy of responses may be filed with the Commission by July 16, 2010. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 3, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 24, 2005, the Department of Commerce issued antidumping duty orders on imports of chlorinated isocyanurates from China and Spain (70 FR 36561–36563). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are China and Spain.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 10–5–213, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Subject Merchandise. In its original determinations, the Commission defined the *Domestic Like Product* as all chlorinated isocyanurates, coextensive with Commerce's scope of investigation.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic integrated producers of chlorinated isocyanurates, as well as all domestic tableters of chlorinated isocyanurates. Certain Commissioners defined the *Domestic Industry* differently.

(5) The *Order Date* is the date that the antidumping duty orders under review became effective. In these reviews, the *Order Date* is June 24, 2005.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 2, 2010. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 2010. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product* , provide the following information on your firm's operations on that product during calendar year 2009, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2009 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Countries,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 22, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–9817 Filed 4–30–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (BJA) Docket No. 1517]

Establishment of Advisory Committee on the National Motor Vehicle Title Information System

AGENCY: Office of Justice Programs (OJP), Justice.

ACTION: Notice of establishment of the National Motor Vehicle Title Information System (NMVTIS) Advisory Board.

SUMMARY: Pursuant to the National Motor Vehicle Title Information System (NMVTIS) Final Rule, 74 FR 5740, 5774 (January 30, 2009) the committee is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2. The NMVTIS Advisory Board is necessary and in the public interest. The objective of the NMVTIS Advisory Board is to provide input and recommendations to the Office of Justice Programs (OJP) regarding the operations and administration of NMVTIS. The Charter is subject to renewal and will expire two years from its filing. The NMVTIS Advisory Board is continuing in nature, to remain functional until the BJA Director determines that all necessary duties have been performed.

FOR FURTHER INFORMATION CONTACT: Alissa Huntoon, Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 7th Street, Northwest, Washington, DC 20531; Phone: (202) 305–1661 [**note:** this is not a toll-free number]; E-mail: *Alissa.Huntoon@usdoj.gov.*

J. Patrick McCreary,

Acting Deputy Director, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 2010–10290 Filed 4–30–10; 8:45 am]

BILLING CODE 4410–18–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0520; Docket Nos. 52–025 and 52–026]

Southern Nuclear Operating Company, et al.: Supplementary Notice of Hearing and Opportunity To Petition for Leave To Intervene on a Combined License Application for the Vogtle Electric Generating Plant Units 3 and 4

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Supplementary notice of hearing and opportunity to petition for leave to intervene.

DATES: Petitions for leave to intervene must be filed by July 2, 2010.

I. Introduction

This proceeding concerns the application dated March 28, 2008, filed by Southern Nuclear Operating Company (SNC, the Applicant), acting on behalf of itself and Georgia Power Company, Oglethorpe Power Corporation (an Electric Membership Corporation), Municipal Electric Authority of Georgia, and the City of Dalton, Georgia, an incorporated municipality in the State of Georgia acting by and through its Board of Water, Light and Sinking Fund Commissioners (Dalton Utilities), pursuant to Subpart C of 10 CFR part 52 for a combined license (COL). The application was accepted for docketing on May 30, 2008. The docket numbers established for this application are 52–025 and 52–026.

The application requests approval of a COL for Vogtle Electric Generating Plant (Vogtle) Units 3 and 4, located in Burke County, Georgia. The Vogtle COL application incorporates by reference the Westinghouse AP1000 design certified in Appendix D to 10 CFR part 52, and the application to amend that certified design. The AP1000 amendment application is the subject of an ongoing rulemaking under docket number 52–006. The Vogtle COL application also references an Early Site Permit (ESP) that was the subject of an adjudicatory proceeding under docket number 52–011. That ESP application also included a request for a limited work authorization (LWA) to engage in selected construction activities as defined by 10 CFR 50.10. The Final Environment Impact Statement for the ESP was published on August 22, 2008. The ESP and accompanying LWA was issued on August 26, 2009.

On September 16, 2008, a notice of hearing and opportunity for leave to intervene was published by the United States Nuclear Regulatory Commission (NRC, the Commission) in the **Federal Register** (73 FR 53446) in this proceeding. That notice specified that a hearing to consider the COL application would be held at a time and place to be set in the future by the Commission or designated by the Atomic Safety and Licensing Board (Board). The notice also provided an opportunity for persons whose interest might be affected by the proceeding to petition for leave to intervene.

On October 2, 2009, SNC submitted to the NRC a supplement to its COL application requesting an LWA to engage in selected construction activities as defined by 10 CFR 50.10. As described by SNC, these activities would generally involve the "installation of reinforcing steel, sumps, and drain lines and other embedded items in the Nuclear Island (NI) foundation base slab and placement of concrete for the NI foundation base slab." SNC provided additional information in support of its LWA request by letters dated February 5, 2010 and March 11, 2010. In light of the request for this additional authorization, the Commission herein dockets the LWA request and supplements its original notice of hearing of September 16, 2008, as follows:

The NRC staff will complete a detailed technical review of the COL application, including the LWA supplement requesting authority to perform selected construction activities as defined by 10 CFR 50.10, and will document its findings in a safety evaluation report (SER) and a supplement to the Vogtle ESP environmental impact statement (EIS). In addition, the Commission will refer a copy of the application to the Advisory Committee on Reactor Safeguards (ACRS) in accordance with 10 CFR 52.87, and the ACRS will report on those portions of the application that concern safety.

II. Petitions for Leave To Intervene

Requirements for petitions for leave to intervene are found in 10 CFR 2.309, "Hearing requests, Petitions to Intervene, Requirements for Standing, and Contentions." Interested persons should consult 10 CFR part 2, section 2.309, which is available at the NRC's Public Document Room (PDR), located at O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 (or call the PDR at (800) 397–4209 or (301) 415–4737). NRC regulations are also accessible electronically from the NRC's Electronic Reading Room on the NRC Web site at *http://www.nrc.gov*.

Any person whose interest may be affected by this proceeding and desires to participate as a party to this proceeding with respect to the LWA supplement to the COL application must file a written petition for leave to intervene in accordance with 10 CFR 2.309. Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A person who is not a party may be permitted to make a limited appearance by making an oral or written statement of his or her position on the issues at any session of the hearing or any pre-hearing conference within the limits and conditions fixed by the presiding officer, but may not otherwise participate in the proceeding.

This supplementary notice does not affect the status of any person previously admitted as a party to this proceeding or provide any additional opportunity to any person to intervene on the basis of, or to raise matters encompassed within, the original notice of hearing published in the **Federal Register** on September 16, 2008 (73 FR 53446).

III. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home

addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submissions.

Petitions for leave to intervene must be filed no later than 60 days from May 3, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Any person who files a motion pursuant to 10 CFR 2.323 must consult with counsel for the applicant and counsel for the NRC staff who are listed below. Counsels for the applicant are M. Stanford Blanton, *sblanton@balch.com,* (205–226–3417), or Moanica M. Caston, *mcaston@southernco.com* (205–739–5738) or Kathryn M. Sutton, 202–739–5378, *ksutton@morganlewis.com*. Counsel for the NRC staff in this proceeding is Ann P. Hodgdon, (301) 415–1587, *Ann.Hodgdon@nrc.gov*.

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (DPR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room staff by telephone at 1–800–397–4209, (301) 415–4737 or by e-mail to pdr.resource@nrc.gov. The application is also available to local residents at the Burke County Library in Waynesboro, Georgia, and is available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/col/vogtle.html*. The accession number for the application is ML081050133. The accession numbers for the October 2, 2009, supplement to the application are ML092960512 and ML092960549, and the accession numbers for the supporting information submitted February 5, 2010, and March 11, 2010, are ML100470600 and ML100740441.

To search for documents in ADAMS using Vogtle Units 3 and 4 COL application docket numbers, 52–025 and 52–026, one should enter the terms "05200025" and "05200026" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS FIND tool in Citrix. The Vogtle ESP can be found in ADAMS using the accession number ML092290157 or by going to *http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html*. To search for documents on the Vogtle ESP docket, one should enter "05200011" in the "Docket Number" field in the web-based search (advanced search) engine or the ADAMS FIND tool.

The AP1000 DCD through Revision 15, which is incorporated by reference into Appendix D of Part 52, can be found by going to *http://www.nrc.gov/reactors/new-reactors/design-cert/ap1000.html*. The AP1000 DCD Revision 17 can be found using ADAMS accession number ML083230868 or by going to *http://www.nrc.gov/reactors/new-reactors/design-cert/ap1000.html*. To search for documents in ADAMS using the AP1000 DCD Revision 17 docket number 52–006, one should enter the term "05200006" in the ADAMS "Docket Number" field.

The Final Environmental Impact Statement for the Vogtle ESP can be found on the NRC Web site at *http://www.nrc.gov/reactors/new-licensing/esp/vogtle.html,* or under ADAMS accession numbers ML082240145, ML082240165, ML082260203, and ML082550040.

Dated at Rockville, Maryland, this 27th day of April 2010.

For the Nuclear Regulatory Commission,

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2010–10234 Filed 4–30–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 213.103.

FOR FURTHER INFORMATION CONTACT: Roland Edwards, Senior Executive Resource Services, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between March 1, 2010, and March 31, 2010. These notices are published monthly in the **Federal Register** at *http://www.gpoaccess.gov/fr/*. A consolidated listing of all authorities as of June 30 is also published each year. The following Schedules are *not* codified in the Code of Federal Regulations. These are agency-specific exceptions.

Schedule A

Section 213.3103 Executive Office of the President

(b) Office of Management and Budget.

(1) Not to exceed 20 positions at grades GS–5/15.

Schedule B

No Schedule B authorities to report during March 2010.

Schedule C

The following Schedule C appointments were approved during March 2010.

Office of Management and Budget

BOGS10014 Special Assistant for Legislative Affairs. Effective March 17, 2010.

Department of State

DSGS69978 Staff Assistant to the Chief of Protocol. Effective March 1, 2010.

DSGS70075 Special Assistant to the Ambassador-At-Large, Director. Effective March 1, 2010.

DSGS70010 Senior Advisor to the Under Secretary for Public Diplomacy and Public Affairs. Effective March 2, 2010.

DSGS70012 Legislative Management Officer for Legislative and Intergovernmental Affairs. Effective March 2, 2010.

DSGS70016 Staff Assistant to the Assistant Secretary, Bureau of Educational and Cultural Affairs. Effective March 11, 2010.

DSGS70104 Special Assistant for Public Affairs. Effective March 12, 2010.

DSGS70105 Special Assistant for Public Affairs. Effective March 12, 2010.

DSGS70006 Deputy Chief of Protocol to the Chief of Protocol. Effective March 17, 2010.

DSGS70084 Special Assistant for European and Eurasian Affairs. Effective March 18, 2010.

DSGS70085 White House Liaison for Management. Effective March 26, 2010.

Department of the Treasury

DYGS00359 Senior Advisor for International Affairs. Effective March 30, 2010.

Department of Defense

DDGS17273 Special Counsel to the General Counsel. Effective March 4, 2010.
DDGS17275 Defense Fellows for White House Liaison. Effective March 5, 2010.
DDGS17276 Special Assistant for Cost Assessment and Program Evaluation. Effective March 19, 2010.

Department of the Army

DWGS10097 Special Assistant to the General Counsel. Effective March 8, 2010.

Department of Justice

DJGS00558 Press Secretary, Office of Public Affairs. Effective March 8, 2010.
DJGS00559 Counsel to the Senior Counselor for Access to Justice. Effective March 11, 2010.
DJGS00602 Senior Advisor to the Assistant Attorney General, Office of Justice Programs. Effective March 22, 2010.
DJGS00074 Confidential Assistant to the Assistant Attorney General (Legislative Affairs). Effective March 29, 2010.
DJGS00604 Senior Counsel for Access to Justice. Effective March 29, 2010.

Department of Homeland Security

DMGS00846 Counselor to the Director, United States Citizenship and Immigration Services. Effective March 10, 2010.
DMGS00848 Special Assistant for Policy. Effective March 10, 2010.
DMGS00849 Director of Public Engagement for Intergovernmental Affairs. Effective March 11, 2010.
DMGS00847 Senior Advisor to the Assistant Secretary for Policy. Effective March 16, 2010.
DMGS00850 Counselor to the Principal Deputy General Counsel. Effective March 18, 2010.
DMGS00808 Special Assistant to the Chief of Staff. Effective March 25, 2010.
DMGS00760 Director of Intergovernmental Affairs to the Director of External Affairs and Communications. Effective March 26, 2010.
DMGS00349 Senior Counselor for Infrastructure Protection. Effective March 31, 2010.

Department of Agriculture

DAGS60593 Special Assistant for Rural Development. Effective March 23, 2010.
DAGS60594 Special Assistant to the Administrator, Rural Housing Service. Effective March 23, 2010.
DAGS60596 Chief of Staff to the Administrator, Rural Housing Service. Effective March 23, 2010.
DAGS60595 Special Assistant for Rural Development. Effective March 24, 2010.
DAGS60597 Press Assistant to the Director of Communications. Effective March 31, 2010.
DAGS60598 Confidential Assistant for Rural Development. Effective March 31, 2010.

Department of Commerce

DCGS00451 Senior Advisor for Manufacturing and Services. Effective March 10, 2010.
DCGS00495 Special Assistant to the Chief of Staff. Effective March 12, 2010.
DCGS00387 Special Assistant to the Administrator and Policy Associate for National Oceanic and Atmospheric Administration. Effective March 22, 2010.

Department of Labor

DLGS60017 Senior Legislative Officer for Congressional and Intergovernmental Affairs. Effective March 3, 2010.
DLGS60210 Associate Director for Faith Based and Community Initiatives, to the Chief of Staff. Effective March 18, 2010.
DLGS60153 Chief of Staff for International Affairs. Effective March 25, 2010.
DLGS60152 Director, Office of Faith Based and Community Initiatives to the Chief of Staff. Effective March 30, 2010.

Department of Education

DBGS00350 Special Assistant to the General Counsel. Effective March 5, 2010.
DBGS00275 Confidential Assistant for Planning, Evaluation, and Policy Development. Effective March 25, 2010.
DBGS00207 Special Assistant for Elementary and Secondary Education. Effective March 30, 2010.
DBGS00326 Special Assistant for Elementary and Secondary Education. Effective March 31, 2010.
DBGS00686 Deputy General Counsel for Accountability to the General Counsel. Effective March 31, 2010.

Environmental Protection Agency

EPGS10005 Associate Assistant Administrator for Outreach, Diversity, and Collaboration to the Assistant Administrator for Administration and Resources Management. Effective March 8, 2010.
EPGS10006 Program Advisor for Congressional and Intergovernmental Relations. Effective March 31, 2010.

Securities and Exchange Commission

SEOT21000 Confidential Assistant to the Chairman. Effective March 31, 2010.
SEOT61000 Speechwriter to the Chairman. Effective March 31, 2010.

Department of Energy

DEGS00800 Senior Advisor to the Principal Deputy Assistant Secretary. Effective March 3, 2010.
DEGS00803 Special Assistant to the Deputy Secretary of Energy. Effective March 3, 2010.

Federal Energy Regulatory Commission

DRGS10011 Confidential Assistant to the Member Federal Energy Regulatory Commission. Effective March 10, 2010.

Small Business Administration

SBGS00702 Policy Associate to the White House Liaison and Deputy Chief of Staff. Effective March 1, 2010.
SBGS00703 White House Liaison to the Chief of Staff. Effective March 4, 2010.

General Services Administration

GSGS01438 Special Assistant to the Deputy Administrator. Effective March 29, 2010.

Export-Import Bank

EBSL42019 Senior Vice President for Congressional Affairs to the President and Chairman. Effective March 8, 2010.
EBSL10001 Deputy Chief of Staff to the President and Chairman. Effective March 12, 2010.

Occupational Safety and Health Review Commission

SHGS60012 Counsel to the Commission Member. Effective March 17, 2010.
SHGS00017 Confidential Assistant to the Commission Member. Effective March 30, 2010.

National Aeronautics and Space Administration

NNGS05892 Legislative Affairs Specialist for Legislative Affairs and Intergovernmental Affairs. Effective March 29, 2010.
NNGS05910 Special Assistant to the General Counsel. Effective March 29, 2010.
NNGS05916 Legislative and Industrial Affairs Specialist for Legislative and Intergovernmental Affairs. Effective March 29, 2010.

NNGS10058 Special Assistant for Public Affairs. Effective March 29, 2010.

National Credit Union Administration

CUOT01382 Senior Advisor to the Chairman. Effective March 3, 2010.
CUOT91402 Staff Assistant to the Vice Chair. Effective March 10, 2010.
TDGS00005 Chief of Staff to the Director. Effective March 12, 2010.

Commodity Futures Trading Commission

CTOT00056 Special Assistant to a Commissioner. Effective March 5, 2010.

Department of Housing and Urban Development

DUGS60280 Special Assistant to the White House Liaison. Effective March 3, 2010.
DUGS60417 Special Assistant to the White House Liaison. Effective March 3, 2010.
DUGS60512 Special Assistant to the Chief of Staff. Effective March 3, 2010.
DUGS60505 Deputy Assistant Secretary for Congressional and Intergovernmental Relations. Effective March 4, 2010.
DUGS60581 Legislative Specialist for Congressional and Intergovernmental Relations. Effective March 4, 2010.
DUGS60036 Special Assistant to the Senior Advisor. Effective March 10, 2010.
DUGS60319 Regional Director for Operations and Management. Effective March 10, 2010.
DUGS60517 Regional Director for Operations and Management. Effective March 10, 2010.
DUGS60534 Deputy Director to the Senior Advisor. Effective March 10, 2010.
DUGS60549 Senior Advisor to the Chief of Staff. Effective March 10, 2010.
DUGS00047 Special Assistant to the White House Liaison. Effective March 12, 2010.
DUGS60354 Senior Advisor for Fair Housing and Equal Opportunity. Effective March 12, 2010.
DUGS60068 Special Assistant to the Director, Office of Sustainable Housing & Communities. Effective March 12, 2010.
DUGS60434 Staff Assistant for Field Policy and Management. Effective March 15, 2010.
DUGS60379 Director, Office of Executive Scheduling and Operations to the Chief of Staff. Effective March 25, 2010.

Department of Transportation

DTGS60337 Director of Communications to the Administrator. Effective March 23, 2010.
DTGS60239 Director, Office of Congressional and Public Affairs to the Administrator. Effective March 26, 2010.
DTGS60313 Director, Office of Governmental Affairs, Policy, and Strategic Planning to the Administrator. Effective March 26, 2010.

National Transportation Safety Board

TBGS11504 Special Assistant to the Chairman. Effective March 10, 2010.
TBGS91567 Special Assistant to the Vice Chairman. Effective March 10, 2010.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2010–10181 Filed 4–30–10; 8:45 am]

BILLING CODE 6325–39–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before June 2, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION: *Title:* Statement of Personal History.
Frequency: On Occasion.
SBA Form Number: 1081.
Description of Respondents: Small Business Lending Companies.
Responses: 243.
Annual Burden: 122.

Title: SBA HUBZone Update data form.
Frequency: On Occasion.
SBA Form Number: 2298.
Description of Respondents: Small Business Concerns.
Responses: 3,500.
Annual Burden: 1,750.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–10392 Filed 4–30–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Rule 19d–3; SEC File No. 270–245; OMB Control No. 3235–0204]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

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 existing collection of information provided for in Rule 19d–3 (17 CFR 240.19d–3)—Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Association, or Prohibitions or Limitations of Access to Services Imposed by Self-Regulatory Organizations. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19d–3 under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency. The

Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 15 respondents will utilize this application procedure annually, with a total burden of 270 hours, for all respondents to complete all submissions. This figure is based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 is 18 hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, the total cost of compliance for all respondents is $27,270. (15 submissions × 18 hours × $101 per hour).

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 26, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10213 Filed 4–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 19d–1; SEC File No. 270–242; OMB Control No. 3235–0206]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

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 existing collection of information provided for in Rule 19d–1 (17 CFR 240.19d–1)—Notices by Self-Regulatory Organizations of Final Disciplinary Actions, Denials Bars, or Limitations Respecting Membership, Association, or Access to Services, and Summary Suspensions. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19d–1 ("Rule") under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations ("SROs") for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1,175 hours, based upon past submissions. This figure is based on 10 respondents, spending approximately 117.5 hours each per year. Each respondent submitted approximately 235 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, the total cost of compliance for all the respondents is $118,675. (10 respondents × 235 responses per respondent × .5 hrs per response × $101 per hour).

Written comments are invited on: (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 estimates 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 26, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10215 Filed 4–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 17f–4; SEC File No. 270–232; OMB Control No. 3235–0225]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the "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.

Section 17(f) (15 U.S.C. 80a–17(f)) under the Investment Company Act of

1940 (the "Act")[1] permits registered management investment companies and their custodians to deposit the securities they own in a system for the central handling of securities ("securities depositories"), subject to rules adopted by the Commission.

Rule 17f–4 (17 CFR 270.17f–4) under the Act specifies the conditions for the use of securities depositories by funds[2] and custodians. The Commission staff estimates that 138 respondents (including 74 active funds, 48 custodians, and 16 possible securities depositories)[3] are subject to the requirements in rule 17f–4. The rule is elective, but most, if not all, funds use depository custody arrangements.[4]

Rule 17f–4 contains two general conditions. First, a fund's custodian must be obligated, at a minimum, to exercise due care in accordance with reasonable commercial standards in discharging its duty as a securities intermediary to obtain and thereafter maintain financial assets.[5] This obligation does not contain a collection of information because it does not impose identical reporting, recordkeeping or disclosure requirements. Funds and custodians may determine the specific measures the custodian will take to comply with this obligation.[6] If the fund deals directly with a depository, the depository's contract or written rules for its participants must provide that the depository will meet similar obligations, which is a collection of information for purposes of the Paperwork Reduction Act of 1995. All funds that deal directly with securities depositories in reliance on rule 17f–4 should have either modified their contracts with the relevant securities depository, or negotiated a modification in the securities depository's written rules when the rule was amended. Therefore, we estimate there is no ongoing burden associated with this collection of information.[7]

Second, the custodian must provide, promptly upon request by the fund, such reports as are available about the internal accounting controls and financial strength of the custodian.[8] If a fund deals directly with a depository, the depository's contract with or written rules for its participants must provide that the depository will provide similar financial reports,[9] which is a collection of information for purposes of the Paperwork Reduction Act of 1995. Custodians and depositories usually transmit financial reports to funds twice each year.[10] The Commission staff estimates that 48 custodians spend approximately 885 hours (by support staff) annually in transmitting such reports to funds.[11] In addition, approximately 74 funds (*i.e.,* two percent of all funds) deal directly with a securities depository and may request periodic reports from their depository. Commission staff estimates that, for each of the 74 funds, depositories spend approximately 17 hours (by support staff) annually transmitting reports to the funds.[12] The total annual burden estimate for compliance with rule 17f–4's reporting requirement is therefore 902 hours.[13]

If a fund deals directly with a securities depository, rule 17f–4 requires that the fund implement internal control systems reasonably designed to prevent an unauthorized officer's instructions (by providing at least for the form, content, and means of giving, recording, and reviewing all officers' instructions).[14] All funds that seek to rely on rule 17f–4 should have already implemented these internal control systems when the rule was amended. Therefore, there is no ongoing burden associated with this collection of information requirement.[15]

Based on the foregoing, the Commission staff estimates that the total annual hour burden of the rule's collection of information requirement is 902 hours.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens 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

[1] 15 U.S.C. 80a.

[2] As amended in 2003, rule 17f–4 permits any registered investment company, including a unit investment trust or a face-amount certificate company, to use a security depository. *See* Custody of Investment Company Assets With a Securities Depository, Investment Company Act Release No. 25934 (Feb. 13, 2003) (68 FR 8438 (Feb. 20, 2003)). The term "fund" is used in this Notice to mean a registered investment company.

[3] The Commission staff estimates that, as permitted by the rule, 2% of all active funds deal directly with a securities depository instead of using an intermediary. The number of custodians is from Lipper Inc.'s Lana Database. Securities depositories include the 12 Federal Reserve Banks and 4 registered depositories.

[4] Based on responses to Item 18 of Form N–SAR (17 CFR 274.101), approximately 98 percent of all funds now use depository custody arrangements. As of November 30, 2009, approximately 3770 funds out of the 3844 active funds relied on rule 17f–4.

[5] Rule 17f–4(a)(1). This provision incorporates into the rule the standard of care provided by section 504(c) of Article 8 of the Uniform Commercial Code when the parties have not agreed to a standard. Rule 17f–4 does not impose any substantive obligations beyond those contained in Article 8. Uniform Commercial Code, Revised Article 8—Investment Securities (1994 Official Text with Comments) ("Revised Article 8").

[6] Moreover, the rule does not impose any requirement regarding evidence of the obligation.

[7] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

[8] Rule 17f–4(a)(2).

[9] Rule 17f–4(b)(1)(ii).

[10] The 48 custodians would handle requests for reports from 3770 fund clients (approximately 79 fund clients per custodian) and the depositories from the remaining 74 funds that choose to deal directly with a depository. It is our understanding based on staff conversations with representatives of custodians that custodians and depositories transmit these reports to clients in the normal course of their activities as a good business practice regardless of whether they are requested. Therefore, for purposes of this PRA estimate, the Commission staff assumes that custodians transmit the reports to all fund clients. If all custodians and depositories transmit these reports to funds in the normal course of their activities, there would be no burden associated with this collection of information. *See* 5 CFR 1320.3(b)(2) ("The time, effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities * * * will be excluded if the agency demonstrates that the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary.").

[11] (48 custodians × 2 reports) = 96 reports × 79 fund clients per custodian = 7584 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of 885 hours (7 minutes × 7584 transmissions). The estimate of time to transmit reports is based on staff conversations with representatives of custodians.

[12] (16 depositories x 2 reports) = 32 reports x 4.6 fund clients per depository = 147 transmissions. The staff estimates that each transmission would take approximately 7 minutes for a total of approximately 17 hours (7 minutes x 147 transmissions).

[13] 885 hours for custodians and 17 hours for securities depositories.

[14] Rule 17f–4(b)(2).

[15] The Commission staff assumes that new funds relying on 17f–4 would choose to use a custodian instead of directly dealing with a securities depository because of the high costs associated with maintaining an account with a securities depository. Thus new funds would not be subject to this condition.

writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: April 26, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10214 Filed 4–30–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61984; File No. SR–Phlx–2010–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to QNET Sector Index Option Fees

April 26, 2010.

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 April 16, 2010, NASDAQ OMX PHLX, Inc. ("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. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge applicable only to a member under Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] 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 proposes to amend the Exchange's Fee Schedule for Sector Index Options by assessing a $.20 per contract transaction fee for options overlying the NASDAQ Internet Index ("QNET"). The Exchange also proposes making other technical clarifications.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after May 3, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's Web site at *http://www.sec.gov,* 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 Exchange proposes to add additional transaction fees to Category III of its Fee Schedule, titled Sector Index Options. The Exchange proposes to assess a $.20 per contract transaction fee for options overlying QNET for the following market participants: Customers, registered options traders (on-floor), specialists, professionals,[5] firms and broker-dealers. The Exchange is proposing to assess the $.20 per contract fee from trade date April 30, 2010 through trade date December 30, 2010. Thereafter, the Exchange proposes to assess the options transaction charges for sector index options as designated by category of market participant on the Fee Schedule, beginning on trade date December 31, 2010. In other words, the Exchange is proposing to eliminate the $.20 per contract transaction promotional pricing after December 30, 2010 and instead assess members the applicable sector index options transaction charges, by market participant, on December 31, 2010. For example, for transactions in QNET sector index options, a customer would no longer be assessed the $.20 per contract on trade date December 31, 2010, but instead would be assessed the option transaction charge, which is currently $.44 per contract.

The Exchange proposes to assess a fixed rate across all market participants for a specified period of time to incentivize members to trade QNET.

The Exchange also proposes removing certain text from the Fee Schedule that was the result of an inadvertent error. The Exchange is proposing to delete the text, "Subject to certain thresholds and per trade caps" from Categories III and IV of the Fee Schedule as related to Registered Options Traders (on-floor) and Specialists in sector index options fees and U.S. dollar-settled foreign currency option fees. The Exchange indicated in a prior proposed rule change that the Firm Related Equity Option and Index Option Cap would no longer be applicable to sector index options[6] and U.S. dollar-settled foreign currency options[7] and the volume threshold.[8]

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after May 3, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed $.20 per contract sector index option fees for QNET is equitable because all market participants would be assessed the same fee. The Exchange further believes that offering the $.20 per contract fee for a specified promotional period and thereafter assessing the standard sector index option transaction fees is also equitable because it is intended to encourage trading in QNET. In addition, the removal of extraneous language in the Fee Schedule should provide clarity to members concerning fees.

[1] 5 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[6] *See* Securities Exchange Act Release No. 59545 (March 9, 2009), 74 FR 11158 (March 16, 2009) (SR–Phlx–2009–20).

[7] *See* Securities Exchange Act Release Nos. [sic] 59243 (January 13, 2009), 74 FR 4272 (January 23, 2009) (SR–Phlx–2008–86).

[8] *See* Securities Exchange Act Release No. 61337 (January 12, 2010), 75 FR 2905 (January 19, 2010) (SR–Phlx–2009–104).

[9] 15 U.S.C. 78f(b).

[10] 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 [11] and paragraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate 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–2010–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–60. 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–Phlx–2010–60 and should be submitted on or before May 24, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10211 Filed 4–30–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61983; File No. SR–ISE–2010–19]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Approval of Proposed Rule Change To List and Trade Options on the ETFS Palladium Trust and the ETFS Platinum Trust

April 26, 2010.

On March 5, 2010, the International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust (collectively "ETFS Options"). The proposed rule change was published in the **Federal Register** on March 26, 2010.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

I. Description of Proposal

Recently, the Commission authorized ISE to list and trade options on the SPDR Gold Trust,[4] the iShares COMEX Gold Trust and the iShares Silver Trust,[5] the ETFS Gold Trust and the ETFS Silver Trust.[6] Now, the Exchange proposes to list and trade options on the ETFS Palladium Trust and the ETFS Platinum Trust.

Under current ISE Rule 502(h), only Exchange-Traded Fund Shares, or ETFs, that are traded on a national securities exchange and are defined as an "NMS" stock under Rule 600 of Regulation NMS, and that: (i) Represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that hold portfolios of securities and/or financial instruments, including, but not limited to, stock index futures contracts, options on futures, options on securities and indices, equity caps, collars and floors, swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the "Financial Instruments"), and money market instruments, including, but not limited to, U.S. government securities and repurchase agreements (the "Money Market Instruments") comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities and/or Financial Instruments and Money Market Instruments (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities and/or Financial Instruments and Money Market Instruments); or (ii) represent interests in a trust that holds a specified non-U.S. currency or currencies deposited with the trust when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency or currencies, if any, declared and paid by the trust ("Funds"); or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61742 (March 19, 2010), 75 FR 14646 ("Notice").

[4] *See* Securities Exchange Act Release No. 57894 (May 30, 2008), 73 FR 32061 (June 5, 2008) (SR–ISE–2008–12).

[5] *See* Securities Exchange Act Release No. 59055 (December 4, 2008), 73 FR 75148 (December 10, 2008) (SR–ISE–2008–58).

[6] *See* Securities Exchange Act Release No. 61483 (February 3, 2010), 75 FR 6753 (February 10, 2010) (SR–ISE–2009–106).

portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs"); or (iv) represent interests in the SPDR® Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust, the ETFS Gold Trust or the ETFS Silver Trust; or (v) represents an interest in a registered investment company ("Investment Company") organized as an open-end management company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies, which is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value ("NAV"), and when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined NAV ("Managed Fund Share") are eligible as underlying securities for options traded on the Exchange.[7] This rule change proposes to expand the types of ETFs that may be approved for options trading on the Exchange to include the ETFS Palladium Trust and the ETFS Platinum Trust.

Apart from allowing the ETFS Palladium Trust and the ETFS Platinum Trust to be an underlying for options traded on the Exchange as described above, the listing standards for ETFs will remain unchanged from those that apply under current Exchange rules. ETFs on which options may be listed and traded must still be listed and traded on a national securities exchange and must satisfy the other listing standards set forth in ISE Rule 502(h).

Specifically, in addition to satisfying the aforementioned listing requirements, ETFs must meet either: (1) The criteria and guidelines under ISE Rules 502(a) and (b); or (2) they must be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer must be obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as provided in the respective prospectus.

The Exchange states that the current continued listing standards for options on ETFs will apply to options on the ETFS Palladium Trust and the ETFS Platinum Trust. Specifically, under ISE Rule 503(h), options on Exchange-Traded Fund Shares may be subject to the suspension of opening transactions as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the underlying palladium or underlying platinum is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable.

Additionally, the ETFS Palladium Trust and the ETFS Platinum Trust shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering the ETFS Palladium Trust and the ETFS Platinum Trust, respectively, if the ETFS Palladium Trust and the ETFS Platinum Trust ceases to be an "NMS stock" as provided for in ISE Rule 503(b)(5) or the ETFS Palladium Trust and the ETFS Platinum Trust is halted from trading on its primary market.

The addition of the ETFS Palladium Trust and the ETFS Platinum Trust to ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits[8] or margin.[9]

The Exchange represents that its surveillance procedures applicable to trading in options on the ETFS Palladium Trust and the ETFS Platinum Trust will be similar to those applicable to all other options on other ETFs currently traded on the Exchange. Also, the Exchange may obtain information from the New York Mercantile Exchange, Inc. ("NYMEX") (a member of the Intermarket Surveillance Group) related to any financial instrument that is based, in whole or in part, upon an interest in or performance of palladium or platinum.

II. Commission Findings

After careful consideration, the Commission finds that the proposed rule change submitted by ISE is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[10] and, in particular, the requirements of Section 6 of the Act.[11] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In accordance with the Memorandum of Understanding entered into between the Commodity Futures Trading Commission ("CFTC") and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

As a national securities exchange, the ISE is required under Section 6(b)(1) of the Act[13] to enforce compliance by its members, and persons associated with its members, with the provisions of the Act, Commission rules and regulations thereunder, and its own rules. In addition, brokers that trade ETFS Options will also be subject to best execution obligations and FINRA rules.[14] Applicable exchange rules also require that customers receive appropriate disclosure before trading ETFS Options.[15] Further, brokers opening accounts and recommending options transactions must comply with relevant customer suitability standards.[16]

ETFS Options will trade as options under the trading rules of the ISE. These rules, among other things, are designed to avoid trading through better

[7] *See* ISE Rule 502(h).

[8] *See* ISE Rules 412 and 414.

[9] *See* ISE Rule 1202.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

[14] *See* NASD Rule 2320.

[15] *See* ISE Rule 616.

[16] *See* FINRA Rule 2360(b) and ISE Rules 608 and 610.

displayed prices for ETFS Options available on other exchanges and, thereby, satisfy ISE's obligation under the Options Order Protection and Locked/Crossed Market Plan.[17] Series of the ETFS Options will be subject to exchange rules regarding continued listing requirements, including standards applicable to the underlying ETFS Silver and ETF Gold Trusts. Shares of the ETFS Silver and ETFS Gold Trusts must continue to be traded through a national securities exchange or through the facilities of a national securities association, and must be "NMS stock" as defined under Rule 600 of Regulation NMS.[18] In addition, the underlying shares must continue to be available for creation or redemption each business day from or through the issuer in cash or in kind at a price related to net asset value.[19] If the ETFS Silver or ETFS Gold Trust shares fail to meet these requirements, the exchanges will not open for trading any new series of the respective ETFS Options.

ISE has represented that it has surveillance programs in place for the listing and trading of ETFS Options. For example, ISE may obtain trading information via the ISG from the NYMEX related to any financial instrument traded there that is based, in whole or in part, upon an interest in, or performance of, palladium or platinum. Additionally, the listing and trading of ETFS Options will be subject to the exchange's rules pertaining to position and exercise limits[20] and margin.[21]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–ISE–2010–19) be, and is hereby, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10212 Filed 4–30–10; 8:45 am]

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[17] *See* ISE Rule 1902. Specifically, ISE is a participant in the Options Order Protection and Locked/Crossed Market Plan.

[18] 17 CFR 242.600.

[19] *See* ISE Rule 502(a)–(b).

[20] *See* ISE Rules 412 and 414.

[21] *See* ISE Rule 1202. *See also* FINRA Rule 2360(b) and Commentary .01 to FINRA Rule 2360.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61979; File No. SR–FINRA–2010–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to Trade Reporting of OTC Equity Securities and Restricted Equity Securities

April 23, 2010.

I. Introduction

On January 15, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to trade reporting of OTC Equity Securities and certain restricted equity securities. On February 5, 2010, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on February 19, 2010.[3] The Commission received no comment letters on the proposed rule change. On March 25, 2010, FINRA filed Amendment No. 2 to the proposed rule change.[4] Because Amendment No. 2 is technical in nature, the Commission is not publishing it for comment. This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

Background

In 1990, the SEC adopted Rule 144A ("SEC Rule 144A") under the Securities Act of 1933[5] ("Securities Act") to establish a safe harbor for the private resale of "restricted securities" to "qualified institutional buyers" ("QIBs").[6] At the same time, FINRA (formerly known as the National Association of Securities Dealers, Inc. ("NASD")) created the PORTAL Market to serve as a system for quoting, trading, and reporting trades in certain designated restricted securities that were eligible for resale under SEC Rule 144A ("PORTAL securities").[7] In September 2008, the NASDAQ Stock Market ("NASDAQ") ceased the operation of the PORTAL Market.[8] NASDAQ explained in its rule filing that it is taking a minority stake in a consortium that will control and operate a new electronic platform for handling transactions in SEC Rule 144A-eligible securities.[9] In October 2009, NASDAQ filed a proposed rule change with the Commission for immediate effectiveness terminating NASDAQ's PORTAL security designation process and removing rules related to the PORTAL Market from its rulebook.[10] As a result, NASDAQ no longer accepts new applications for debt or equity securities seeking PORTAL designation.[11]

In the instant rule proposal, FINRA has proposed to delete certain PORTAL rules from its rulebook, amend certain other rules to address gaps that elimination of such PORTAL rules would create, amend certain definitions to create consistent use of terminology in FINRA rules, and make certain other clarifying changes.

III. Description of the Proposal

Current FINRA Rule 6610 requires that members report transactions in "OTC Equity Securities" to the OTC

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 61510 (February 5, 2010), 75 FR 7530 ("Notice").

[4] Amendment No. 2 reflects changes to FINRA Rule 6635 that were made in SR–FINRA–2010–002, which was filed with the Commission for immediate effectiveness on January 14, 2010. *See* Securities Exchange Act Release No. 61427 (January 27, 2010), 75 FR 5834 (February 4, 2010).

[5] 17 CFR 230.144A.

[6] *See* Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 (April 30, 1990). For the purpose of SEC Rule 144A, a QIB is generally defined as any institution acting for its own account, or for the accounts of other QIBs, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers that are not affiliated with the institution.

[7] *See* Securities Exchange Act Release No. 27956 (April 27, 1990), 55 FR 18781 (May 4, 1990).

[8] *See* Securities Exchange Act Release No. 58638 (September 24, 2008), 73 FR 57188 (October 1, 2008). As part of the separation of NASDAQ from FINRA, certain functionality relating to PORTAL, including the qualification and designation of PORTAL securities, became part of NASDAQ's rules and were eliminated from the NASD rules. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

[9] In addition to NASDAQ ceasing operation of the PORTAL Market, the Commission has also approved the deletion of the Depository Trust Company ("DTC") requirement that a SEC Rule 144A security, other than investment grade securities, be included in an "SRO Rule 144A System" in order to be eligible for DTC's deposit, book-entry delivery, and other depository services. *See* Securities Exchange Act Release No. 59384 (February 11, 2009), 74 FR 7941 (February 20, 2009). The PORTAL Market was the only "SRO Rule 144A System." *Id.*

[10] Securities Exchange Act Release No. 60991 (November 12, 2009), 74 FR 60006 (November 19, 2009).

[11] *See id.* NASDAQ noted in the filing that nothing in the proposal was "intended to impact securities previously designated as PORTAL securities or alter any existing regulatory obligation applicable to such securities, including, but not limited to, any trade reporting obligation imposed by any self-regulatory organization." *Id.*

Reporting Facility ("ORF").[12] Under the current definitions in Rule 6420, "restricted securities," as defined by SEC Rule 144(a)(3), and securities designated in the PORTAL Market are carved out of the ORF reporting requirement.[13] Transaction reporting for certain of these securities to the ORF—specifically, restricted equity securities that are designated for inclusion in the PORTAL Market—is instead required by FINRA Rule 6633(a).[14]

In light of the recent elimination of NASDAQ's PORTAL rules, FINRA has proposed to eliminate certain of its PORTAL rules.[15] However, because FINRA has determined that elimination of the PORTAL rules that govern transaction reporting would create a gap in the transaction reporting requirements for SEC Rule 144A securities, FINRA proposed to amend FINRA Rule 6622, to ensure that all equity securities that are "restricted securities" under Rule 144(a)(3);[16] and that are traded pursuant to SEC Rule 144A, will continue to be reported to the ORF. Under the proposal, transactions in all restricted equity securities effected pursuant to Commission Rule 144A would generally be required to be reported to the ORF no later than 8 p.m. Eastern Time without interruption.[17] Transactions in restricted equity securities effected pursuant to Commission Rule 144A and executed between 8 p.m. and midnight would be required to be reported the following business day (T+1) by 8 p.m.

In addition, FINRA proposed to amend the definition of "OTC Equity Security" in Rule 6420 to delete the reference to securities that "qualify for real-time trade reporting" and, instead, to define the term as any equity security that is not an "NMS stock" as defined by the Commission in Regulation NMS.[18] The proposed rule change also would eliminate the defined term "non-exchange-listed security" from Rule 6420.[19] The effect of these changes is that any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan will be excluded from the definition of "OTC Equity Security" in Rule 6420.

Further, the proposal would amend the ORF rules to address explicitly transactions in OTC Equity Securities that are executed on an exchange. FINRA's trade reporting rules historically have been limited to only trades executed "otherwise than on an exchange."[20] As explained in the Notice, the FINRA/NASDAQ TRF Rules, the FINRA/NYSE TRF Rules, and the ADF Rules all include an exception from the reporting obligations for transactions reported on or through an exchange.[21] These rules collectively provide for the submission of trade reports to FINRA for transactions in NMS stocks only if the transaction is executed over-the-counter. FINRA Rule 6622, which governs the submission of transaction reports to the ORF for transactions in OTC Equity Securities, does not include a similar exception for transactions in otherwise eligible securities that are reported on or through an exchange.[22] Thus, FINRA proposed to amend Rule 6622 to include an explicit exception for transactions in OTC Equity Securities reported on or through an exchange, and to amend Rule 6420(k) and Rule 6610 to clarify further that transactions in OTC Equity Securities must be reported to the ORF where such transactions are executed otherwise than on or through an exchange.

FINRA also proposed to conform the definition of "OTC equity security" in Rule 7410 of the OATS rules to the proposed definition in Rule 6420 and explained that the proposed change will not result in any change to the scope of securities required to be reported to OATS. FINRA similarly proposed to eliminate the separate definition of "OTC Equity Security" in FINRA Rule 4560 (Short-Interest Reporting),[23] explaining that the proposal would "exclude from the short-interest record keeping and reporting requirements all restricted equity securities, such that equity securities that are currently PORTAL securities would continue to be excepted from the record keeping and reporting requirements as well as any other restricted equity securities."[24]

As stated in the Notice, FINRA represented that it will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the *Regulatory Notice* announcing Commission approval.

IV. Discussion and Commission's Findings

The Commission has reviewed carefully the proposed rule change and finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the Act,[25] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing transactions in securities, and, in

[12] *See* FINRA Rule 6610.

[13] *See* FINRA Rule 6420(c) and (d).

[14] *See* FINRA Rule 6633(a). *See also,* Notice, *supra* note 3.

[15] FINRA Rule 6633(a). The proposed rule change is limited in scope to equity securities and would not affect the Trade Reporting and Compliance Engine Service ("TRACE") or the reporting requirements with respect to transactions in debt securities. *See* Notice *supra* note 3. In addition to the reporting rules, current FINRA Rule 6635 specifies which FINRA rules are and are not applicable to transactions and business activities relating to PORTAL securities. Under the proposal FINRA will retain FINRA Rule 6635 as FINRA Rule 6630 to maintain the status quo with respect to the application of FINRA rules to those securities designated as PORTAL securities prior to October 26, 2009.

[16] *See* 17 CFR 230.144.

[17] *See* Notice *supra* note 3, explaining that the ORF reporting session deadline is 8:00 p.m.

[18] Rule 600 of Regulation NMS defines "NMS stock" as any NMS security other than an option. "NMS security" is defined as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." *See* 17 CFR 242.600(b)(46), 242.600(b)(47).

[19] FINRA Rule 6440 (Submission of SEA Rule 15c2–11 Information on Non-Exchange-Listed Securities) and NASD Rule 2320(f), which is often referred to as the Three Quote Rule, use the term "non-exchange-listed security." Because the proposed rule change deletes the term "non-exchange-listed security" from Rule 6420, the proposed rule change also amends FINRA Rule 6440 and NASD Rule 2320(f) to define the term for purposes of those rules. The proposed definition in each rule is identical to the definition as it appeared in FINRA Rule 6420. Consequently, there is no change in the application of either rule as a result of the proposed rule change.

[20] *See, e.g.,* FINRA Rule 6100, 6200, and 6300 Series.

[21] *See* FINRA Rules 6282(i)(1)(C), 6380A(e)(1)(C), 6380B(e)(1)(C).

[22] The ORF Rules do include an exception for transactions in foreign equity securities when the transaction is executed on and reported to a foreign securities exchange or the transaction is executed over-the-counter in a foreign country and is reported to the regulator of securities markets for that country. *See* FINRA Rule 6622(g).

[23] In Amendment No. 1, FINRA stated as follows: "The proposed rule change eliminates the separate definition of "OTC Equity Security" in FINRA Rule 4560 (Short-Interest Reporting). Currently, the PORTAL Rules carve out PORTAL securities from the record keeping and reporting requirements of Rule 4560. *See* Rule 6635(d). Consistent with this existing exclusion for PORTAL securities, FINRA is proposing to amend Rule 4560 to exclude from the short-interest record keeping and reporting requirements all restricted equity securities, such that equity securities that are currently PORTAL securities would continue to be excepted from the record keeping and reporting requirements as well as any other restricted equity securities."

[24] *See* Amendment No. 1.

[25] 15 U.S.C. 78*o*–3(b)(6).

general, to protect investors and the public interest.[26]

The proposed rule change is intended to address the cessation of the PORTAL market and clarify the scope of the ORF Rules, as well as make conforming changes to other FINRA Rules. The Commission believes that the proposed rule change is reasonably designed to ensure that FINRA will continue to receive important transaction information with respect to securities that are traded over-the-counter. In addition, the Commission believes that the amended definition "OTC Equity Security," the standardization of that definition throughout FINRA rules and FINRA's other proposed changes will close gaps and add clarity with respect to the application of specified FINRA rules to certain securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2010–003), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–10252 Filed 4–30–10; 8:45 am]

BILLING CODE 8011–01–P

[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6983]

Culturally Significant Objects Imported for Exhibition Determinations: "John Baldessari: Pure Beauty"

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, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "John Baldessari: Pure Beauty," 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 Los Angeles County Museum of Art, Los Angeles, CA, from on or about June 27 2010, until on or about September 12, 2010; at the Metropolitan Museum of Art, New York, NY, from on or about October 18, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: April 27, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–10255 Filed 4–30–10; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS403]

WTO Dispute Settlement Proceeding Regarding Philippines—Taxes on Distilled Spirits

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on March 29, 2010, the United States requested establishment of a dispute settlement panel under the *Marrakesh Agreement Establishing the World Trade Organization* ("WTO Agreement") with respect to the taxation of imported distilled spirits in the Philippines. That request may be found at *http://www.wto.org* in a document designated as WT/DS403/4. The panel was established by the World Trade Organization ("WTO") Dispute Settlement Body on April 20, 2010. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 2, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0005. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below) the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Courtney E. Smothers, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–5657.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 2527(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that it requested a panel and the panel has been established pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"). The panel will hold its meetings in Geneva, Switzerland, and would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by the United States

The United States has raised concerns with the Philippines over taxation of distilled spirits many times over the past several years, both bilaterally and in WTO forums. On January 14, 2010, the United States requested consultations regarding this issue. The Philippines taxes distilled spirits at rates that differ depending on the product from which the spirit is distilled. The Philippines taxes distilled spirits made from certain materials that are typically produced in the Philippines, such as cane sugar and palm, at a low rate (*e.g.* 13.59 pesos per proof liter in 2009). Other distilled spirits are taxed at significantly higher rates (from approximately ten to forty times higher) than the low rate applied to domestic products. The Philippines' taxes on distilled spirits appear not to tax similarly imported distilled spirits

as compared to directly competitive or substitutable domestic distilled spirits. The taxes appear to be applied in a way that affords protection to the domestic products. In addition, the taxes appear to subject imported distilled spirits to internal taxes in excess of those applied to like domestic products. Accordingly, the tax treatment of distilled spirits in the Philippines appears to be inconsistent with Article III:2 of the GATT 1994.

On January 14, 2010, the United States requested consultations with the Philippines. That request may be found at *http://www.wto.org* contained in a document designated as WT/DS403/1. Consultations were held in Geneva on February 23, 2010, but did not resolve the concerns with respect to the Philippine taxes.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2010–0005. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2009–0035 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filling in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–10179 Filed 4–30–10; 8:45 am]

BILLING CODE 3190–W0–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Availability for the Small Business Transportation Resource Center Program

AGENCY: Office of the Secretary of Transportation (OST), Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Transportation (DOT).

ACTION: Notice of Funding Availability.

SUMMARY: The Department of Transportation (DOT), Office of the Secretary (OST), Office of Small and Disadvantaged Business Utilization (OSDBU) announces the opportunity for; (1) Business centered community-based organizations; (2) transportation-related trade associations; (3) colleges and universities; (4) community colleges or; (5) chambers of commerce, registered with the Internal Revenue Service as 501 C(6) or 501 C(3) tax-exempt organizations, to compete for participation in OSDBU's Small Business Transportation Resource Center (SBTRC) program in the Central Region, the Southeast Region, and the West Central Region. The Southwest, South Atlantic, and Mid-South Atlantic Regions have previously been competed in Fiscal Year 2010. The Great Lakes, Gulf, Mid Atlantic, Northeast, and Northwest Regions will be competed at a later date as their cooperative agreements expire.

OSDBU will enter into Cooperative Agreements with these organizations to outreach to the small business community in their designated region and provide financial and technical assistance, business training programs, such as, business assessment, management training, counseling, technical assistance, marketing and outreach, and the dissemination of information, to encourage and assist small businesses to become better prepared to compete for, obtain, and manage DOT funded transportation-related contracts and subcontracts at the Federal, State and local levels.

Throughout this notice, the term "small business" will refer to: 8(a), Disadvantaged business enterprises (DBE), women owned small business (WOB), HubZone, service disabled veteran owned business (SDVOB), and veteran owned small business (VOSB). Throughout this notice, "transportation-related" is defined as the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation.

Funding Opportunity Number: USDOT–OST–OSDBU–SBTRC2010–3.

Catalog of Federal Domestic Assistance (CFDA) Number: 20.910 Assistance to small and disadvantaged businesses.

Type of Award: Cooperative Agreement Grant.

Award Ceiling: $150,000.

Award Floor: $110,000.

Program Authority: DOT is authorized under 49 U.S.C. 332 (b) (4), (5) &(7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

DATES: Complete Proposals must be electronically submitted to OSDBU via e-mail on or before June 2, 2010, 5 p.m. Eastern Standard Time. Proposals received after the deadline will be considered non-responsive and will not be reviewed. The applicant is advised to turn on request delivery receipt notification for e-mail submissions. DOT plans to give notice of awards for the competed regions on or before June 30, 2010.

ADDRESSES: Applications must be electronically submitted to OSDBU via e-mail at *SBTRC@dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, contact Mr. Arthur D. Jackson, U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization, 1200 New Jersey Avenue, SE. W56–462, Washington, DC 20590. Telephone: 1–800–532–1169. E-mail: *art.jackson@dot.gov.*

SUPPLEMENTARY INFORMATION:

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1. Introduction

1.1 Background

The United States Department of Transportation (DOT) established the Office of Small and Disadvantaged Business Utilization (OSDBU) in accordance with Public Law 95–507, an amendment to the Small Business Act and the Small Business Investment Act of 1958.

The mission of OSDBU at DOT is to ensure that the small and disadvantaged business policies and goals of the Secretary of Transportation are developed and implemented in a fair, efficient and effective manner to serve small and disadvantaged businesses throughout the country. The OSDBU also administers the provisions of Title 49, Section 332, the Minority Resource Center (MRC) which includes the duties of advocacy, outreach and financial services on behalf of small and disadvantaged business and those certified under CFR 49 parts 23 and or 26 as Disadvantaged Business Enterprises (DBE) and the development of programs to encourage, stimulate, promote and assist small businesses to become better prepared to compete for, obtain and manage transportation-related contracts, and subcontracts.

The Regional Partnerships Division of OSDBU, through the SBTRC program allows OSDBU to partner with local organizations to offer a comprehensive delivery system of business training, technical assistance and dissemination of information, targeted towards small business transportation enterprises in their regions.

1.2 Program Description and Goals

The national SBTRC program utilizes Cooperative Agreements with chambers of commerce, trade associations, educational institutions and business-centered community based organizations to establish SBTRCs to provide business training, technical assistance and information to DOT grantees and recipients, prime contractors and subcontractors. In order to be effective and serve their target audience, the SBTRCs must be active in the local transportation community in order to identify and communicate opportunities and provide the required technical assistance. SBTRCs must already have, or demonstrate the ability to establish working relationships with the State and local transportation agencies and technical assistance agencies (*i.e.,* The U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Small Business Development Centers (SBDCs), Procurement Technical Assistance Centers (PTACs), SCORE and State DOT highway supportive services contractors in their region. Utilizing these relationships and their own expertise, the SBTRCs are involved in activities such as information dissemination, small business counseling, and technical assistance with small businesses currently doing business with public and private entities in the transportation industry.

Effective outreach is critical to the success of the SBTRC program. In order for their outreach efforts to be effective, SBTRCs must be familiar with DOT's Operating Administrations, its funding sources, and how funding is awarded to DOT grantees, recipients, contractors, subcontractors, and its financial assistance programs. SBTRCs must outreach to the regional small business transportation community to disseminate information and distribute DOT-published marketing materials, such as STLP Program Information, Bonding Assistance information, SBTRC brochures and literature, Procurement Forecasts; Contracting with DOT booklets, and any other materials or resources that DOT or OSDBU may develop for this purpose. To maximize outreach, the SBTRC may be called upon to participate in regional and national conferences and seminars. Quantities of DOT publications for on-hand inventory and dissemination at conferences and seminars will be available upon request from the OSDBU office.

1.3 Description of Competition

The purpose of this RFP is to solicit proposals from transportation-related trade associations, chambers of commerce, community based entities, colleges and universities, community colleges, and any other qualifying transportation-related non-profit organizations with the desire and ability to partner with OSDBU to establish and maintain an SBTRC.

It is OSDBU's intent to award Cooperative Agreement to one organization in each of the designated geographical area(s), from herein

referred to as "region(s)", competed in this solicitation. However, if warranted, OSDBU reserves the option to make multiple awards to selected partners. Proposals submitted for a region must contain a plan to service the entire region, not just the SBTRC State or local geographical area. The region's SBTRC headquarters must be established in the designated State set forth below. Submitted proposals must also contain justification for the establishment of the SBTRC headquarters in a particular city within the designated State.

SBTRC REGION(S) COMPETED IN THIS SOLICITATION

Central Region:
Missouri, Headquarters.
Arkansas.
Iowa.
Kansas.
Minnesota.
Southeast Region:
Florida, Headquarters.
Alabama.
Mississippi.
Puerto Rico.
Virgin Islands.
West Central Region:
Colorado, Headquarters.
Nebraska.
North Dakota.
South Dakota.
Utah.
Wyoming.

Program requirements and selection criteria, set forth in Sections 2 and 4 respectively, indicate, the OSDBU intends for the SBTRC to be multidimensional; that is, the selected organizations must have the capacity to effectively access and provide supportive services to the broad range of small businesses within the respective geographical region. To this end, the SBTRC must be able to demonstrate that they currently have established relationships within the geographic region with whom they may coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources.

Cooperative agreement awards will be distributed to the region(s) as follows:

Central Region	Up to $150,000 per year.
Southeast Region	Up to $123,000 per year.
West Central Region	Up to $110,000 per year.

Cooperative agreement awards by region are based upon an analysis of DBEs, Certified Small Businesses, and U.S. DOT transportation dollars in each region.

It is OSDBU's intent to maximize the benefits received by the small business transportation community through the SBTRC. Funding may be utilized to reimburse an on-site Project Director up to 100% of salary plus fringe benefits, an on-site Executive Director up to 50% of salary plus fringe benefits, the cost of designated SBTRC space, other direct costs, and all other general and administrative expenses. Selected SBTRC partners will be expected to provide in-kind administrative support. Submitted proposals must contain an alternative funding source with which the SBTRC will fund administrative support costs. Preference will be given to proposals containing in-kind contributions for the Project Director, the Executive Director, cost of designated SBTRC space, other direct costs, and all other general and administrative expenses.

1.4 Duration of Agreements

Cooperative agreements will be awarded for a period of 12 months (one year) with options for two (2) additional one year periods. OSDBU will notify the SBTRC of our intention to exercise an option year or not to exercise an option year 30 days in advance of expiration of the current year.

1.5 Authority

DOT is authorized under 49 U.S.C. 332(b)(4), (5) & (7) to design and carry out programs to assist small disadvantaged businesses in getting transportation-related contracts and subcontracts; develop support mechanisms, including management and technical services, that will enable small disadvantaged businesses to take advantage of those business opportunities; and to make arrangements to carry out the above purposes.

1.6 Eligibility Requirements

To be eligible, an organization must be an established, nonprofit, community-based organization, transportation-related trade association, chamber of commerce, college or university, community college, and any other qualifying transportation-related non-profit organization which has the documented experience and capacity necessary to successfully operate and administer a coordinated delivery system that provides access for small businesses to prepare and compete for transportation-related contracts.

In addition, to be eligible, the applicant organization must:

(A) Be an established 501C(3) or 501C(6) tax-exempt organization and provide documentation as verification. No application will be accepted without proof of tax-exempt status;

(B) Have at least one year of documented and continuous experience prior to the date of application in providing advocacy, outreach, and technical assistance to small businesses within the region in which proposed services will be provided. Prior performance providing services to the transportation community is preferable, but not required; and

(C) Have an office physically located within the proposed city in the designated headquarters State in the region for which they are submitting the proposal that is readily accessible to the public.

2. Program Requirements

2.1 Recipient Responsibilities

(A) Assessments, Business Analyses

1. Conduct an assessment of small businesses in the SBTRC region to determine their training and technical assistance needs, and use information that is available at no cost to structure programs and services that will enable small business enterprises to become better prepared to compete for and receive transportation-related contract awards.

2. Contact other Federal, State and local governmental agencies, such as the U.S. Small Business Administration, (SBA), State and local highway departments, State and local airport authorities, and transit authorities to identify relevant and current information that may support the assessment of the regional small business transportation community needs.

(B) General Management & Technical Training and Assistance

1. Utilize OSDBU's Intake Form to document each small business assisted by the SBTRC and type of service(s) provided. The completed form must be transmitted electronically to the SBTRC Program Manager on a monthly basis, accompanied by a narrative report on the activities and performance results

for that period. The data gathered must be supportive by the narrative and must relate to the numerical data on the monthly reports.

2. Ensure that an array of information is made available for distribution to the small business transportation community that is designed to inform and educate the community on DOT/OSDBU services and opportunities.

3. Coordinate efforts with OSDBU's National Information Clearinghouse in order to maintain an on-hand inventory of DOT/OSDBU informational materials for general dissemination and for distribution at transportation-related conferences and other events.

(C) Business Counseling

1. Collaborate with agencies, such as the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs), to offer a broad range of counseling services to transportation-related small business enterprises.

2. Create a technical assistance plan that will provide each counseled participant with the knowledge and skills necessary to improve the management of their own small business to expand their transportation-related contracts and subcontracts portfolio.

3. Provide a minimum of 20 hours of individual or group counseling sessions to small businesses per month.

(D) Planning Committee

1. Establish a Regional Planning Committee consisting of at least 7 members that includes representatives from the regional community and Federal, State, and local agencies. The highway, airport, and transit authorities for the SBTRC's headquarters State must have representation on the planning committee. This committee shall be established no later than 60 days after the execution of the Cooperative agreement between the OSDBU and the selected SBRTC.

2. Provide a forum for the Federal, State, and local agencies to disseminate information about upcoming procurements.

3. Hold either monthly or quarterly meetings at a time and place agreed upon by SBTRC and planning committee members.

4. Use the initial session (teleconference call) by the SBTRC to explain the mission of the committee and identify roles of the staff and the members of the group.

5. Responsibility for the agenda and direction of the Planning Committee should be handled by the SBTRC Executive Director or his/her designee.

(E) Outreach Services/Conference Participation

1. Utilize the services of the Central Contractor Registration (CCR) and other sources to construct a database of regional small businesses that currently or may participate in DOT direct and DOT funded transportation related contracts, and make this database available to OSDBU, upon request.

2. Utilize the database of regional transportation-related small businesses to match opportunities identified through the planning committee forum, FedBiz Opps, a Web-based system for posting solicitations and other Federal procurement-related documents on the Internet, and other sources to eligible small businesses and contact the eligible small businesses about those opportunities.

3. Develop a "targeted" database of firms (100–150) that have the capacity and capabilities, and are ready, willing and able to participate in DOT contracts and subcontracts immediately. This control group will receive ample resources from the SBTRC, *i.e.,* access to working capital, bonding assistance, business counseling, management assistance and direct referrals to DOT agencies at the State and local levels, and to prime contractors as effective subcontractor firms.

4. Identify regional, State and local conferences where a significant number of small businesses, with transportation related capabilities, are expected to be in attendance. Maintain and submit a list of those events to the SBTRC Program Manager for review and for posting on the OSDBU Web site on a monthly basis. Include recommendations for OSDBU and/or SBTRC participation with the list.

5. Conduct outreach and disseminate information to small businesses at regional transportation-related conferences, seminars, and workshops. In the event that the SBTRC is requested to participate in an event, prior approval must be granted by the OSDBU prior to participation. Upon OSDBU approval, the SBTRC will send DOT materials, the OSDBU banner and other information that is deemed necessary for the event.

6. Submit a conference summary report to OSDBU no later than 5 business days after participation in the event or conference. The conference summary report must summarize activities, contacts, outreach results, and recommendations for continued or discontinued participation in future similar events sponsored by that organization.

7. Upon approval by OSDBU, coordinate efforts with DOT's grantees and recipients at the State and/or local levels to sponsor or cosponsor an OSDBU transportation related conference in the region.

(F) Loan and Bond Assistance

1. Work with STLP participating banks and if not available, other lending institutions, to deliver a minimum of five (5) seminars/workshops per year on the STLP financial assistance program to the transportation-related small business community. The seminar/workshop must cover the entire STLP process, from completion of STLP loan applications and preparation of the loan package to graduation from the STLP.

2. Provide direct support, technical support, and advocacy services to potential STLP applicants to increase the probability of STLP loan approval and generate a minimum of 5 approved STLP applications per year.

3. Work with local bond producers/agents in your region to deliver a minimum of five (5) seminars/workshops to DBEs on the DOT ARRA BAP and how the Reimbursable Fee Program works. A minimum of 10 DBE firms per workshop should participate.

4. Provide direct support, technical support, and advocacy services to potential Disadvantaged Business Enterprise American Reinvestment and Recovery Act of 2009 Bonding Assistance Reimbursable Fee Program (DBE ARRA BAP) applicants to increase the probability of reimbursement approval and generate a minimum of 5 approved DBE ARRA BAP applications until September 8, 2010 or until notice of cessation in the event the program is extended.

5. Provide direct support, technical support, and advocacy services to potential Bonding Assistance Program (BAP) applicants to increase the probability of guaranteed bond approval and generate a minimum of 5 approved BAP applications per year from inception of the BAP program.

(G) Furnish all labor, facilities and equipment to perform the services described in this announcement.

2.2 Office of Small and Disadvantaged Business Utilization (OSDBU) Responsibilities

(A) Provide consultation and technical assistance in planning, implementing and evaluating activities under this announcement.

(B) Provide orientation and training to the applicant organization.

(C) Monitor SBTRC activities, cooperative agreement compliance, and overall SBTRC performance.

(D) Assist SBTRC to develop or strengthen its relationships with Federal, State, and local transportation authorities, other technical assistance organizations, and DOT grantees.

(E) Facilitate the exchange and transfer of successful program activities and information among all SBTRC regions.

(F) Provide the SBTRC with DOT/OSDBU materials and other relevant transportation-related information for dissemination.

(G) Maintain effective communication with the SBTRC and inform them of transportation news and contracting opportunities to share with small businesses in their region.

(H) Provide all required forms to be used by the SBTRC for reporting purposes under the program.

(I) Perform an annual performance evaluation of the SBTRC. Satisfactory performance is a condition of continued participation of the organization as an SBTRC and execution of all option years.

3. Submission of Proposals

3.1 Format for Proposals

Each proposal must be submitted to DOT's OSDBU in the format set forth in the application form attached as Appendix A to this announcement.

3.2 Address; Number of Copies; Deadlines for Submission

Any eligible organization, as defined in Section 1.6 of this announcement, will submit only one proposal per region for consideration by OSDBU. Eligible organizations may submit proposals for multiple regions.

Applications must be double spaced, and printed in a font size not smaller than 12 points. Applications will not exceed 35 single-sided pages, not including any requested attachments.

All pages should be numbered at the top of each page. All documentation, attachments, or other information pertinent to the application must be included in a single submission.

Grant application packages must be submitted electronically to OSDBU at *SBTRC@dot.gov.* The applicant is advised to turn on request delivery receipt notification for e-mail submissions.

Proposals must be received by DOT/OSDBU no later than June 2, 2010 5 p.m., EST.

4. Selection Criteria

4.1 General Criteria

OSDBU will award the cooperative agreement on a best value basis, using the following criteria to rate and rank applications:

Applications will be evaluated using a point system (maximum number of points = 100);

- Approach and strategy (25 points).
- Linkages (25 points).
- Organizational Capability (25 points).
- Staff Capabilities and Experience (15 points).
- Cost Proposal (10 points).

(A) Approach and Strategy (25 Points)

The applicant must describe their strategy to achieve the overall mission of the SBTRC as described in this solicitation and service the small business community in their entire geographic regional area. The applicant must also describe how the specific activities outlined in Section 2.1 will be implemented and executed in the organization's regional area. OSDBU will consider the extent to which the proposed objectives are specific, measurable, time-specific, and consistent with OSDBU goals and the applicant organization's overall mission. OSDBU will give priority consideration to applicants that demonstrate innovation and creativity in their approach to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs. Applicants must also submit the estimated direct costs, other than labor, to execute their proposed strategy. OSDBU will consider the quality of the applicant's plan for conducting program activities and the likelihood that the proposed methods will be successful in achieving proposed objectives at the proposed cost.

(B) Linkages (25 Points)

The applicant must describe their established relationships within their geographic region and demonstrate their ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies to maximize resources. OSDBU will consider innovative aspects of the applicant's approach and strategy to build upon their existing relationships and established networks with existing resources in their geographical area. The applicant should describe their strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors. In rating this factor, OSDBU will consider the extent to which the applicant demonstrates ability to be multidimensional. The applicant must demonstrate that they have the ability to access a broad range of supportive services to effectively serve a broad range of transportation-related small businesses within their respective geographical region. Emphasis will also be placed on the extent to which the applicant identifies a clear outreach strategy related to identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

(C) Organizational Capability (25 Points)

The applicant must demonstrate that they have the organizational capability to meet the program requirements set forth in Section 2. The applicant organization must have sufficient resources and past performance experience to successfully outreach to the small business transportation resources in their geographical area and carry out the mission of the SBTRC. In rating this factor, OSDBU will consider the extent to which the applicant's organization has recent, relevant and successful experience in advocating for and addressing the needs of small businesses. Applicants will be given points for demonstrated past transportation-related performance. The applicant must also describe technical and administrative resources it plans to use in achieving proposed objectives. In their description, the applicant must describe their facilities, computer and technical facilities, ability to tap into volunteer staff time, and a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC. The applicant must also describe their administrative and financial management staff. OSDBU will place an emphasis on capabilities of the applicant's financial management staff.

(D) Staff Capability and Experience (15 Points)

The applicant organization must provide a list of proposed personnel for the project, with salaries, fringe benefit burden factors, educational levels and

previous experience clearly delineated. The applicant's project team must be well-qualified, knowledgeable, and able to effectively serve the diverse and broad range of small businesses in their geographical region. The Executive Director and the Project Director shall be deemed key personnel. Detailed resumes must be submitted for all proposed key personnel and outside consultants and subcontractors. Proposed key personnel must have detailed demonstrated experience providing services similar in scope and nature to the proposed effort. The proposed Project Director will serve as the responsible individual for the program. 100% of the Project Director's time must be dedicated to the SBTRC. Both the Executive Director and the Project Director must be located on-site. In this element, OSDBU will consider the extent to which the applicant's proposed Staffing Plan; (a) clearly meets the education and experience requirements to accomplish the objectives of the cooperative agreement; (b) delineates staff responsibilities and accountability for all work required and; (c) presents a clear and feasible ability to execute the applicant's proposed approach and strategy.

(E) Cost Proposal (10 Points)

Applicants must submit the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. The applicant's budget must be adequate to support the proposed strategy and costs must be reasonable in relation to project objectives. The portion of the submitted budget funded by OSDBU can not exceed the ceiling outlined in Section 1.3 Description of Competition per fiscal year. Applicants are encouraged to provide in-kind costs and other innovative cost approaches.

4.2 Scoring of Applications

A review panel will score each application based upon the evaluation criteria listed above. Points will be given for each evaluation criteria category, not to exceed the maximum number of points allowed for each category. Proposals which are deemed non–responsive, do not meet the established criteria, or incomplete at the time of submission will be disqualified.

OSDBU will perform a responsibility determination of the prospective winning recipient in each region, which may include a site visit, before awarding the cooperative agreement.

4.3 Conflicts of Interest

Applicants must submit signed statements by key personnel and all organization principals indicating that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or State transportation agencies that may have the appearance of a conflict of interest.

Appendix A

Format for Proposals for the Department of Transportation Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center (SBTRC) Program

Submitted proposals for the DOT, Office of Small and Disadvantaged Business Utilization's Small Business Transportation Resource Center Program must contain the following 12 sections and be organized in the following order:

1. Table of Contents

Identify all parts, sections and attachments of the application.

2. Application Summary

Provide a *summary overview* of the following:

- The applicant's proposed SBTRC region and city and key elements of the plan of action/strategy to achieve the SBTRC objectives.
- The applicant's relevant organizational experience and capabilities.

3. Understanding of the Work

Provide a narrative which contains specific project information as follows:

- The applicant will describe its understanding of the OSDBU's SBTRC program mission and the role of the applicant's proposed SBTRC in advancing the program goals.
- The applicant will describe specific outreach needs of transportation-related small businesses in the applicant's region and how the SBTRC will address the identified needs.

4. Approach and Strategy

- Describe the applicant's plan of action/strategy for conducting the program in terms of the tasks to be performed.
- Describe the specific services or activities to be performed and how these services/activities will be implemented.
- Describe innovative and creative approaches to assist small businesses to become successful transportation contractors and increase their ability to access DOT contracting opportunities and financial assistance programs.
- Estimated direct costs, other than labor, to execute the proposed strategy.

5. Linkages

- Describe established relationships within the geographic region and demonstrate the ability to coordinate and establish effective networks with DOT grant recipients and local/regional technical assistance agencies.
- Describe the strategy to obtain support and collaboration on SBTRC activities from DOT grantees and recipients, transportation prime contractors and subcontractors, the SBA, U.S. Department of Commerce's Minority Business Development Centers (MBDCs), Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), Small Business Development Centers (SBDCs), State DOTs, and State highway supportive services contractors.
- Describe the outreach strategy related to the identified needs that can be successfully carried out within the period of this agreement and a plan for involving the Planning Committee in the execution of that strategy.

6. Organizational Capability

- Describe recent and relevant past successful performance in addressing the needs of small businesses, particularly with respect to transportation-related small businesses.
- Describe internal technical, financial management, and administrative resources.
- Propose a plan for sufficient matching alternative financial resources to fund the general and administrative costs of the SBTRC.

7. Staff Capability and Experience

- List proposed key personnel, their salaries and proposed fringe benefit factors.
- Describe the education, qualifications and relevant experience of key personnel. Attach detailed resumes.
- Proposed staffing plan. Describe how personnel are to be organized for the program and how they will be used to accomplish program objectives. Outline staff responsibilities, accountability and a schedule for conducting program tasks.

8. Cost Proposal

- Outline the total proposed cost of establishing and administering the SBTRC in the applicant's geographical region for a 12 month period, inclusive of costs funded through alternative matching resources. Clearly identify the portion of the costs funded by OSDBU.
- Provide a brief narrative linking the cost proposal to the proposed strategy.

9. Proof of Tax Exempt Status

10. Assurances Signature Form

Complete Standard Form 424B ASSURANCES-NON-CONSTRUCTION PROGRAMS identified as Attachment 1. SF424B may be downloaded from *http://www.grants.gov/techlib/SF424B-V1.1.pdf.*

11. Certification Signature Forms

Complete form DOTF2307–1 DRUG-FREE WORKPLACE ACT CERTIFICATION FOR A GRANTEE OTHER THAN AN INDIVIDUAL and Form DOTF2308–1 CERTIFICATION REGARDING LOBBYING FOR CONTRACTS, GRANTS, LOANS, AND COOPERATIVE AGREEMENTS identified as Attachment 2. The forms may be downloaded from *http://www.osdbu.dot.gov/financial/docs/Cert Drug-Free DOT F 2307-1.pdf* and *http://www.osdbu.dot.gov/financial/docs/Cert Lobbying DOT F 2308-1.pdf.*

12. Signed Conflict of Interest Statements

The statements must say that they, or members of their immediate families, do not have a personal, business or financial interest in any DOT-funded transportation projects, nor any relationships with local or State transportation agencies that may have the appearance of a conflict of interest.

13. Standard Form 424

Complete Standard Form 424 Application for Federal Assistance identified as Attachment 3. SF424 can be downloaded from *http://www.grants.gov/techlib/SF424-V2.0.pdf*.

Please be sure that all forms have been signed by an authorized official who can legally represent the organization.

Issued in Washington, DC on April 27, 2010.

Brandon Neal,

Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary, U.S. Department of Transportation.

[FR Doc. 2010–10239 Filed 4–30–10; 8:45 am]

BILLING CODE 4910–9X–P

Federal Register

Monday,
May 3, 2010

Part II

Securities and Exchange Commission

17 CFR Parts 200, 229, 230 et al.
Asset-Backed Securities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 229, 230, 232, 239, 240, 243, and 249

[Release Nos. 33–9117; 34–61858; File No. S7–08–10]

RIN 3235–AK37

Asset-Backed Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing significant revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities. Our proposals would revise filing deadlines for ABS offerings to provide investors with more time to consider transaction-specific information, including information about the pool assets. Our proposals also would repeal the current credit ratings references in shelf eligibility criteria for asset-backed issuers and establish new shelf eligibility criteria that would include, among other things, a requirement that the sponsor retain a portion of each tranche of the securities that are sold and a requirement that the issuer undertake to file Exchange Act reports on an ongoing basis so long as its public securities are outstanding. We also are proposing to require that, with some exceptions, prospectuses for public offerings of asset-backed securities and ongoing Exchange Act reports contain specified asset-level information about each of the assets in the pool. The asset-level information would be provided according to proposed standards and in a tagged data format using extensible Markup Language (XML). In addition, we are proposing to require, along with the prospectus filing, the filing of a computer program of the contractual cash flow provisions expressed as downloadable source code in Python, a commonly used open source interpretive programming language. We are proposing new information requirements for the safe harbors for exempt offerings and resales of asset-backed securities and are also proposing a number of other revisions to our rules applicable to asset-backed securities.

DATES: Comments should be received on or before August 2, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–08–10 on the subject line; or
- Use the Federal Rulemaking 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 S7–08–10. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and copying 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. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Katherine Hsu, Senior Special Counsel in the Office of Rulemaking, at (202) 551–3430, and Rolaine Bancroft, Special Counsel in the Office of Structured Finance, Transportation and Leisure, at (202) 551–3313, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are proposing amendments to Rule 30–1 [1] of the Commission's Rules of General Organization,[2] Items 512 [3] and 601 [4] of Regulation S–K; [5] Items 1100, 1101, 1102, 1103, 1104, 1106, 1110, 1111, 1121, and 1122 [6] of Regulation AB [7] (a subpart of Regulation S–K); Rules 139a, 144, 144A, 167, 190, 401, 405, 415, 424, 430B, 430C, 433, 456, 457, 502 and 503 [8] and Forms S–1, S–3 and D [9] under the Securities Act of 1933 ("Securities Act"); [10] Rules 11, 101, 201, 202, 305, and 312 [11] of Regulation S–T,[12] and Rules 15c2–8 and 15d–22 [13] and Forms 8–K, 10–D, and 10–K [14] under the Securities Exchange Act of 1934 ("Exchange Act") [15] and Rule 103 [16] of Regulation FD.[17] We also are proposing to add Items 1111A and 1121A [18] to Regulation AB and Rule 192,[19] Rule 430D,[20] Form SF–1,[21] Form SF–3 [22] and Form 144A–SF [23] under the Securities Act.

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[1] 17 CFR 200.30–1.

[2] 17 CFR 200.1 *et al.*

[3] 17 CFR 229.512.

[4] 17 CFR 229.601.

[5] 17 CFR 229.10 *et al.*

[6] 17 CFR 229.1100, 17 CFR 229.1101, 17 CFR 229.1102, 17 CFR 229.1103, 17 CFR 229.1104, 17 CFR 229.1106, 17 CFR 229.1110, 17 CFR 229.1111, 17 CFR 229.1121 and 17 CFR 229.1122.

[7] 17 CFR 229.1100 through 17 CFR 229.1123.

[8] 17 CFR 230.139a, 17 CFR 230.144, 17 CFR 230.144A, 17 CFR 230.167, 17 CFR 230.190, 17 CFR 230.401, 17 CFR 405; 17 CFR 230.415, 17 CFR 230.424, 17 CFR 230.430B, 17 CFR 230.430C, 17 CFR 230.433, 17 CFR 230.456. 17 CFR 230.457, 17 CFR 230.502, and 17 CFR 230.503.

[9] 17 CFR 239.11, 17 CFR 239.13 and 17 CFR 239.500.

[10] 15 U.S.C. 77a *et seq.*

[11] 17 CFR 232.11, 17 CFR 232.101, 17 CFR 232.201, 17 CFR 232.202, 17 CFR 232.305 and 17 CFR 232.312.

[12] 17 CFR 232.10 *et seq.*

[13] 17 CFR 240.15c2–8 and 17 CFR 240.15d–22.

[14] 17 CFR 249.308, 17 CFR 249.310, and 17 CFR 249.312.

[15] 15 U.S.C. 78a *et seq.*

[16] 17 CFR 243.103.

[17] 17 CFR 243.100 *et. seq.*

[18] 17 CFR 229.1111A and 17.CFR 229.1121A.

[19] 17 CFR 230.192.

[20] 17 CFR 230.430D.

[21] 17 CFR 239.44.

[22] 17 CFR 239.45.

[23] 17 CFR 239.144A.

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I. Executive Summary

A. Background

The recent financial crisis highlighted that investors and other participants in the securitization market did not have the necessary tools to be able to fully understand the risk underlying those securities and did not value those securities properly or accurately. The severity of this lack of understanding and the extent to which it pervaded the market and impacted the U.S. and worldwide economy calls into question the efficacy of several aspects of our regulation of asset-backed securities. In light of the problems exposed by the financial crisis, we are proposing significant revisions to our rules governing offers, sales and reporting with respect to asset-backed securities. These proposals are designed to improve investor protection and promote more efficient asset-backed markets.

Securitization generally is a financing technique in which financial assets, in many cases illiquid, are pooled and converted into instruments that are offered and sold in the capital markets as securities. This financing technique makes it easier for lenders to exchange payment streams coming from the loans for cash so that they can make additional loans or credit available to a wide range of borrowers and companies seeking financing. Some of the types of assets that are financed today through securitization include residential and commercial mortgages, agricultural equipment leases, automobile loans and leases, student loans and credit card receivables. Throughout this release, we refer to the securities sold through such

vehicles as asset-backed securities, ABS, or structured finance products.

At its inception, securitization primarily served as a vehicle for mortgage financing. Since then, asset-backed securities have played a significant role in both the U.S. and global economy. At the end of 2007, there were more than $7 trillion of both agency and non-agency [24] mortgage-backed securities and nearly $2.5 trillion of asset-backed securities outstanding.[25] Securitization can provide liquidity to nearly all major sectors of the economy including the residential and commercial real estate industry, the automobile industry, the consumer credit industry, the leasing industry, and the commercial lending and credit markets.[26]

Many of the problems giving rise to the financial crisis involved structured finance products, including mortgage-backed securities.[27] Many of these mortgage-backed securities were used to collateralize other debt obligations such as collateralized debt obligations and collateralized loan obligations (CDOs or CLOs), types of asset-backed securities that are sold in private placements.[28] As the default rate for subprime and other mortgages soared, such securities, including those with high credit ratings, lost their value.[29] CDOs were noted, in particular, to have contributed to the collapse in liquidity during the financial crisis.[30] As the crisis unfolded, investors increasingly became unwilling to purchase these securities, and today, this sentiment remains, as new issuances of asset-backed securities, except for government-sponsored issuances, have recently dramatically decreased.[31] The absence of this financing option has negatively impacted the availability of credit.[32]

The financial crisis highlighted a number of concerns with the operation of our rules in the securitization market. Certain regulations for asset-backed securities rely on the ratings for those securities provided by the ratings agencies, and much has been written about the failures of those ratings accurately to measure and describe the risks associated with certain of those products that were realized during the financial crisis.[33] In addition, investors have expressed concern regarding a lack of time to analyze securitization transactions and make investment decisions.[34] While the Commission historically has not built minimum time periods into its registration process to deliberately slow down the market,[35] and instead has believed investors can insist on adequate time to analyze securities (and refuse to invest if not provided sufficient time), we have been told that this is not generally possible in this market, particularly in an active market.[36] In addition, market participants have expressed a desire for expanded disclosure relating to the assets underlying securitizations.[37] Investors have complained that the mechanisms for enforcing the representations and warranties contained in securitization transaction documents are weak, and thus are not confident that even strong representations and warranties provide them with adequate protection. In the private market, we believe that, in many cases, investors did not have the information necessary to understand and properly analyze structured products, such as CDOs, that were sold in transactions in reliance on exemptions from registration.[38] As a result of these and other factors, the financial crisis resulted in an absence of confidence in much of the securitization market.

We are proposing a number of changes to the offering process, disclosure, and reporting for asset-backed securities, which are designed to enhance investor protection in this market.[39] The proposals are intended to provide investors with timely and sufficient information, including information in and about the private market for asset-backed securities, reduce the likelihood of undue reliance on credit ratings, and help restore investor confidence in the representations and warranties regarding the assets. Although these revisions are comprehensive and therefore would impose new burdens, if adopted, we believe they would protect investors and promote efficient capital

[24] Agency securities are securities issued by the government-sponsored enterprises, Ginnie Mae, Fannie Mae or Freddie Mac.

[25] *See* American Securitization Forum, Study on the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets (June 17, 2009), at 16 (citing to statistics on outstanding residential mortgage-backed securities and outstanding U.S. ABS collected by the Securities Industry and Financial Markets Association), available at *http://www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf.*

[26] *See* testimony of Micah Green, President of the Bond Market Association, Before the Senate Basel Committee on Banking Supervision, A Review of the New Basel Capital Accord, (June 13, 2003), available at *http://banking.senate.gov/.*

[27] A report by the U.S. Government Accountability Office (GAO) notes that 75% of subprime loans were packaged into securities in 2006. *See* U.S. Government Accountability Office, *Financial Regulation: A Framework for Crafting and Assessing Proposals to Modernize the Outdated U.S. Financial Regulatory System* (Jan. 2009) at 26.

[28] CDOs are typically sold as a private placement to an initial purchaser followed by resales of the securities to "qualified institutional buyers" pursuant to Rule 144A. Pools comprising the CDOs may consist of various types of underlying assets including subprime mortgage-backed securities and derivatives, such as credit default swaps referencing subprime mortgage-backed securities, and even tranches of other CDOs. CLOs are similar to CDOs except that they hold corporate loans, loan participations or credit default swaps tied to corporate liabilities.

[29] *See, e.g.,* The President's Working Group on Financial Markets, Policy Statement on Financial Market Developments, March 2008 (the "PWG March 2008 Report") at 9 (discussing subprime mortgages and the write-down of AAA-rated and super-senior tranches of CDOs as contributing factors to the financial crisis).

[30] *See, e.g.,* The Report of the Counterparty Risk Management Policy Group III ("CRMPG III"), *Containing Systemic Risk: The Road to Reform,* August 6, 2008 (the "2008 CRMPG III Report"), at 53 (noting that lack of comprehension of CDO and related instruments resulted in the display of price depreciation and volatility far in excess of levels previously associated with comparably rated securities, causing both a collapse of confidence in a very broad range of structured product ratings and a collapse in liquidity for such products). Another type of asset-backed security that is privately offered is asset-backed commercial paper (ABCP), which was increasingly collateralized by CDOs and RMBS from 2004 through 2007. The ABCP market severely contracted during the crisis. *See* PWG March 2008 Report at 8.

[31] *See, e.g.,* David Adler, "A Flat Dow for 10 Years? Why it Could Happen," *Barrons* (Dec. 28, 2009) (noting that new securitization issuances, except those sponsored by the government, have largely come to a halt). In 2008 through the end of September, annualized issuance volumes for overall global securitized and structured credit issuance were approximately $2.4 trillion less than in 2006. *See* Global Joint Initiative to Restore Confidence in the Securitization Market, *Restoring Confidence in the Securitization Markets* (Dec. 3, 2008) at 6.

[32] *Id.*

[33] *See, e.g.,* The PWG March 2008 Report at 2, 8 (noting that the performance of credit rating agencies, particularly their ratings of mortgage-backed securities and other asset-backed securities, contributed significantly to the financial crisis).

[34] *See* discussion in Section II.B.1 below.

[35] *See, e.g.,* Section IV.A. of *Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) [70 FR 44722] (release adopting significant revisions to registration, communications and offering process under the Securities Act) (the "Offering Reform Release") (stating that Rule 159 would not result in a speed bump or otherwise slow down the offering process).

[36] *See* discussion in Section II.B.1 below.

[37] *See also* discussion in Section III.A.1 below.

[38] The assumption that sophisticated investors are able to fend for themselves in a private asset-backed securities transaction has also been questioned. *Cf.* Financial Services Authority, *The Turner Review: A Regulatory Response to the Global Banking Crisis,* March 2009 (the "Turner Review"), at 39 (finding that "the crisis also raises important questions about the intellectual assumptions on which previous regulatory approaches have largely been built").

[39] Our proposals, if adopted, would not affect the applicability of the Investment Company Act (15 U.S.C. 80a–1 *et seq.*) to ABS issuers, including the availability of exclusions from such Act. *See, e.g.,* Section 3(c)(1) or Section 3(c)(7) (15 U.S.C. 80a–3(c)(1) and 80a–3(c)(7)) (for private transactions); Rule 3a–7 [17 CFR 270.3a–7] (for public and private transactions). Our proposals are not intended to affect the application of the Investment Company Act, including the availability of these exclusions, to ABS issuers.

formation. The proposals cover the following areas:

- Revisions to the shelf offering process and criteria and prospectus delivery requirements;
- Securities Act and Exchange Act disclosure requirements, including new requirements to disclose standardized asset-level information or grouped asset data and a computer program that gives effect to the cash flow provisions of the transaction agreement (often referred to as the "waterfall"); and
- Changes to the Securities Act safe harbors for exempt offerings and exempt resales for asset-backed securities.

In addition, we are proposing clarifying, technical and other changes to the current rules. The proposals are designed to address issues that contributed to or arose from the financial crisis. These proposals are also designed to be forward looking; some of these proposals are designed to improve areas that have the potential to raise issues similar to the ones highlighted in the financial crisis.

Our proposals are generally consistent with global initiatives that seek to improve practices in the securitization market.[40] These initiatives include calls by international organizations to require greater disclosure by issuers of securitized products, including initial and ongoing information about underlying asset pool performance.[41] Our focus on both the public and private markets for securitized products is supported by recommendations from international regulators about the type of disclosure that should be provided to investors in the private markets.[42]

B. Securities Act Registration

Securities Act shelf registration provides important timing and flexibility benefits to issuers. An issuer with an effective shelf registration statement can conduct delayed offerings "off the shelf" under Securities Act Rule 415 without further staff clearance. Under our current rules, asset-backed securities may be registered on a Form S–3 registration statement and later offered "off the shelf" if, in addition to meeting other specified criteria,[43] the securities are rated investment grade by a nationally recognized statistical rating organization (NRSRO). As described in detail in Section II.B.3. below, we are proposing to repeal that criterion and establish other criteria for shelf eligibility. We are also proposing changes to the Securities Act rules and forms for issuances of asset-backed securities.

We have undertaken a Commission-wide effort to consider whether references to NRSRO credit ratings in all the Commission's regulations are necessary or appropriate and whether they could cause investors to unduly rely on ratings.[44] In this release, we are proposing to eliminate the current means of establishing shelf eligibility for an ABS transaction based on the credit ratings of the securities to be issued.[45] Instead, we are proposing to require for shelf eligibility the following:

- A certification filed at the time of each offering off of a shelf registration statement, or takedown, by the chief executive officer of the depositor[46] that the assets in the pool have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows to service any payments due and payable on the securities as described in the prospectus;
- Retention by the sponsor of a specified amount of each tranche of the securitization,[47] net of the sponsor's hedging (also known as "risk retention" or "skin-in-the-game");
- A provision in the pooling and servicing agreement that requires the party obligated to repurchase the assets for breach of representations and warranties to periodically furnish an opinion of an independent third party regarding whether the obligated party acted consistently with the terms of the pooling and servicing agreement with respect to any loans that the trustee put back to the obligated party for violation of representations and warranties and which were not repurchased; and
- An undertaking by the issuer to file Exchange Act reports so long as non-affiliates of the depositor hold any securities that were sold in registered transactions backed by the same pool of assets.

We also are proposing to replace Forms S–1 and S–3 with new forms for registered ABS offerings—proposed Forms SF–1 and SF–3—and to revise the shelf offering structure for those securities. Form SF–3 would be the form used for ABS shelf offerings.

Given many ABS investors' stated desire for more time to consider the transaction and for more detailed information regarding the pool assets,[48] we are proposing to revise the filing deadlines in shelf offerings to provide investors with additional time to analyze transaction-specific information prior to making an investment decision. These changes are designed to promote independent analysis of ABS by investors rather than reliance on credit ratings. Under the proposed ABS shelf procedures, an ABS issuer would be required to file a preliminary prospectus with the Commission for each takedown off of the proposed new shelf registration form for ABS (Form SF–3) at least five business days prior to the first sale in the offering.[49] Under the

[40] *See Improving Financial Regulation—Report of the Financial Stability Board to G20 Leaders,* (Sept. 25, 2009) ("The official sector must provide the framework that ensures discipline in the securitisation market as it revives.").

[41] *Id.*

[42] International Organization of Securities Commissions, *Final Report of the Task Force on the Subprime Crisis* (May 2008) (discussing the types of disclosure that, following the model offered by the types of disclosure mandated in the public markets, private investors may want issuers to provide).

[43] *See* discussion of other criteria in fn. 70 below.

[44] *See References to Ratings of Nationally Recognized Statistical Rating Organizations,* Exchange Act Release No. 58070 (July 1, 2008) [73 FR 40088] (proposing amendments to rules and forms under the Securities Exchange Act); *References to Ratings of Nationally Recognized Statistical Ratings Organizations,* Investment Company Act Release No. 28327 (July 1, 2008) [73 FR 40124] (proposing amendments to rules under the Investment Company Act and the Investment Advisers Act); *Security Ratings,* Securities Act Release No. 8940 (July 1, 2008) [73 FR 40106] (proposing amendments to rules and forms under the Securities Act and the Securities Exchange Act) ("2008 Proposing Release").

[45] As part of the Commission-wide effort to consider whether references to NRSRO credit ratings are necessary, we proposed to replace the ratings requirement in the shelf eligibility criteria in the 2008 Proposing Release. See also Section II.A. below. We reopened the comment period in October 2009. *References to Ratings of Nationally Statistical Rating Organizations,* Release No. 33–9069 (Oct. 5, 2009) [74 FR 52374]. After considering comments, we are withdrawing this part of the proposals in the 2008 Proposing Release, and we are proposing different ABS shelf eligibility requirements to replace the investment grade ratings requirement.

[46] We use the term "depositor" to mean the depositor who receives or purchases and transfers or sells the pool assets to the issuing entity. For ABS transactions where there is not an intermediate transfer of the assets from the sponsor to the issuing entity, the term depositor refers to the sponsor. For ABS transactions where the person transferring or selling the pool assets is itself a trust, the depositor of the issuing entity is the depositor of that trust. *See* Item 1101(e) of Regulation AB.

[47] We use the term "sponsor" to mean the person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate, to the issuing entity. *See* Item 1101(l) of Regulation AB.

[48] *See* discussion in Section III.A.1 below regarding our proposals relating to asset-level information.

[49] Pursuant to Exchange Act Rule 15c2–8(b) [17 CFR 240.15c2–8(b)], with respect to ABS, a broker-dealer is exempt from the requirement that a preliminary prospectus be delivered to prospective investors at least 48 hours prior to sending a confirmation of sale if the issuer of the securities has not previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m or 15 U.S.C. 28o). We also are proposing to repeal this exception from Rule 15c2–8(b) such that a broker-dealer would be required to deliver a preliminary prospectus at least 48 hours prior to sending a confirmation of sale in

Continued

proposal, issuers would use one prospectus for each transaction and the current practice of using core or base prospectuses plus supplements would be eliminated for ABS.

C. Disclosure

In 2004, we adopted a new set of rules prescribing the disclosure requirements for asset-backed issuers.[50] Many disclosure requirements of Regulation AB are principles-based. Regulation AB currently requires that material, aggregate information about the composition and characteristics of the asset pool be filed with the Commission and provided to investors. As described in detail in Sections III, IV and V below, we are proposing additional, and, in some cases, revised disclosure requirements for ABS offerings and ongoing reporting.

For each loan or asset in the asset pool, we are proposing to require disclosure of specified data relating to the terms of the asset, obligor characteristics, and underwriting of the asset. Such data would be provided in a machine-readable, standardized format so that it is most useful to investors and the markets. Under our proposal, issuers would be required to provide the asset-level data or grouped account data at the time of securitization, when new assets are added to the pool underlying the securities, and on an ongoing basis.

We are proposing to require the filing of a computer program (the "waterfall computer program," as defined in the proposed rule) of the contractual cash flow provisions of the securities in the form of downloadable source code in Python, a commonly used computer programming language that is open source and interpretive. The computer program would be tagged in XML and required to be filed with the Commission as an exhibit. Under our proposal, the filed source code for the computer program, when downloaded and run (by loading it into an open "Python" session on the investor's computer), would be required to allow the user to programmatically input information from the asset data file that we are proposing to require as described above. We believe that, with the waterfall computer program and the asset data file, investors would be better able to conduct their own evaluations of ABS and may be less likely to be dependent on the opinions of credit rating agencies.

We also are proposing additional requirements to refine current disclosure requirements for asset-backed securities. Among other things, we are proposing to require:

- Aggregated and loan-level data relating to the type and amount of assets that do not meet the underwriting criteria that is specified in the prospectus;
- For certain identified originators, information relating to the amount of the originator's publicly securitized assets that, in the last three years, has been the subject of a demand to repurchase or replace;
- For the sponsor, information relating to the amount of publicly securitized assets sold by the sponsor that, in the last three years, has been the subject of a demand to repurchase or replace;
- Additional information regarding originators and sponsors;
- Descriptions relating to static pool information, such as a description of the methodology used in determining or calculating the characteristics of the pool performance as well as any terms or abbreviations used;
- That static pool information for amortizing asset pools comply with the Item 1100(b) requirements for the presentation of historical delinquency and loss information; and
- The filing of Form 8–K for a one percent or more change in any material pool characteristic from what is described in the prospectus (rather than for a five percent or more change, as currently required).

We also are proposing to limit some of the existing exceptions to the discrete pool requirement in the definition of an asset-backed security. This is intended to not only address recent concerns arising out of the financial crisis but also serve to protect against future practices of participants along the chain of securitization that could result in the addition of assets into a securitization pool without a clear understanding of their quality.

D. Privately-Issued Structured Finance Products

A significant portion of securities transactions, including the offer and sale of all CDOs and ABCP, is conducted in the exempt private placement market, which includes both offerings eligible for Rule 144A resales and other private placements.[51] CDOs are typically sold by the issuer in a private placement to one or more initial purchaser or purchasers in reliance upon the Section 4(2) private offering exemption in the Securities Act, which is available only to the issuer, followed by resales of the securities to "qualified institutional buyers" in reliance upon Rule 144A.[52] Subsequent resales may also be made in reliance upon Rule 144A. Rule 144A provides a safe harbor for resellers from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act[53] for the sale of securities to qualified institutional buyers. If the conditions of the Rule 144A safe harbor are satisfied, sellers may rely on the exemption from Securities Act registration provided by Section 4(1) for transactions by persons other than issuers, underwriters or dealers.[54]

Some have concluded that the events of the financial crisis have demonstrated that a lack of understanding of CDOs and other privately offered structured finance products by investors, rating agencies and other market participants may have significant consequences to the entire financial system.[55] For example, the ratings of these products proved inaccurate, which significantly contributed to the financial crisis.[56] This lack of understanding by credit rating agencies, investors, and other market participants indicates that the offering processes and disclosure

connection with an issuance of ABS, including those issued by ABS issuers exempted from the requirement to file reports pursuant to Section 12(h) of the Exchange Act.

[50] *See* the 2004 ABS Adopting Release.

[51] CDOs often permit the active management of their pool assets, which could include engaging in activities the primary purpose of which is to protect or enhance the returns of their equity holders. Such CDOs typically would not meet the requirements of Rule 3a–7 under the Investment Company Act because that rule includes conditions that are intended to permit an issuer to engage only in limited activities that do not in any sense parallel typical 'management' of registered investment company portfolios. Accordingly, these CDOs usually rely on one of the private investment company exclusions, both of which condition the exclusion in part on the issuer not making a public offering. *See* fn. 39 above.

[52] In general, a qualified institutional buyer is any entity included within one of the categories of "accredited investor" defined in Rule 501 of Regulation D, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least $100 million in securities of issuers not affiliated with the entity (or $10 million for a broker-dealer).

[53] 15 U.S.C. 77b(a)(11) and 15 U.S.C. 77d(1).

[54] *See* Section II.A. of the *Resale of Restricted Securities,* Release No. 33–6862 (Apr. 30, 1990) [55 FR 17933] (the "Rule 144A Adopting Release").

[55] *See, e.g.,* The PWG March 2008 Report (noting that originators, underwriters, asset managers, credit rating agencies and investors failed to obtain sufficient information or conduct comprehensive risk assessments on instruments that were often quite complex and also noting that downgrades were even more frequent and severe for CDOs of ABS with subprime mortgage loans as the underlying collateral). *See also* the Turner Review, at 20 (finding that "the financial innovations of structured credit resulted in the creation of products—*e.g,* the lower credit tranches of CDOs or even more so CDO-squareds—which had very high and imperfectly understood embedded leverage.").

[56] *See id.*

available in the public and private market were inadequate to provide appropriate investor protection. Further, these securities are issued by special purpose vehicles whose only purpose is holding financial assets, with numerous parties involved in the securitization process.[57] As a result, information about those assets and the structure of the vehicle is critical to an informed investment decision.

The safe harbors of Rule 144A and Regulation D that provide the ability to rely on an exemption from registration do not impose specific requirements on the disclosures provided to investors if those investors meet certain size requirements. However, the financial crisis has called into question the ability of our rules, as they relate to the private market for asset-backed securities, to ensure that investors had access to, and had sufficient time and incentives to adequately consider, appropriate information regarding these securities.[58]

We are proposing to require enhanced disclosure by asset-backed issuers who wish to take advantage of the safe harbor provisions for these privately-issued securities.[59] In addition, in order to provide additional transparency with respect to the private market for these securities, we are proposing amendments to Rule 144A to require a structured finance product issuer to file a public notice on EDGAR of the initial placement of structured finance products that are eligible for resale under Rule 144A. As we believe that the Commission may benefit from the availability of more information about private placements of structured finance products, we are proposing to require that in submitting such notice, the issuer undertakes to provide offering materials to the Commission upon written request.

All of our proposals, if adopted, would apply to new issuances of asset-backed securities. Therefore, the proposed rules, if adopted, would not impose new requirements on outstanding asset-backed securities.

II. Securities Act Registration

We are proposing a number of changes to the Securities Act registration process for the offer and sale of asset-backed securities. These changes include proposed new eligibility criteria for shelf offerings and changes to the shelf offering process.

A. History of ABS Shelf Offerings

In 1984, mortgage related securities, a subset of asset-backed securities, were first permitted to be offered on a "shelf" basis. Contemporaneous with the enactment of Secondary Mortgage Market Enhancement Act of 1984 (SMMEA),[60] which added the definition of "mortgage related security" to the Exchange Act, we amended Securities Act Rule 415 to permit mortgage related securities to be offered on a delayed basis, regardless of which form is utilized for registration of the offering.[61] SMMEA defined a mortgage related security to include a security that has a high investment grade credit rating.[62]

In 1992, in order to facilitate registered offerings of asset-backed securities and eliminate differences in treatment under our registration rules between mortgage related asset-backed securities (which could be registered on a delayed basis) and other asset-backed securities of comparable character and quality (which could not), we expanded the ability to use "shelf offerings" to other asset-backed securities.[63] Under the 1992 amendments, offerings of asset-backed securities rated investment grade by an NRSRO[64] could be registered on Form S–3.[65] The eligibility requirement's definition of "investment grade" was largely based on the definition in the existing eligibility requirement for non-convertible corporate debt securities.[66]

The 1992 amendments did not prescribe specific disclosure requirements for ABS offerings; disclosure in ABS offerings was based largely on market practices and SEC staff guidance.[67] At the end of 2004, the Commission adopted new rules and amendments under the Securities Act and the Exchange Act addressing the registration, disclosure and reporting requirements for asset-backed securities.[68] In the 2004 amendments ("2004 ABS Adopting Release"), we prescribed specific ABS disclosure requirements for the first time, which are largely principles-based. In addition, under the 2004 amendments, we retained the investment grade ratings condition to ABS Form S–3 eligibility[69] and added additional shelf eligibility conditions.[70]

[57] *See also* discussion in Section VI. below.

[58] An assessment of whether the protections of the Act are needed often focuses on whether the purchasers of securities can "fend for themselves." *SEC v. Ralston Purina Co.,* 346 U.S. 119, 125 (1953). Historically, whether this test is met turned on whether information necessary or appropriate to make informed decisions is realistically available to the purchasers. *See id.* The Supreme Court also noted that "We agree that some employee offerings may come within § 4(1), *e.g.,* one made to executive personnel who because of their position have access to the same kind of information that the Act would make available in the form of a registration statement." *Id.* at 125. *See also Lawler* v. *Gilliam,* 569 F.2d 1283 (4th Cir. 1978) (discussing the Supreme Court's observation in *Ralston* that an offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering' and the ruling that an essential requirement is access to the kind of information that registration would disclose).

[59] We are also proposing to make conforming changes to Regulation D, Form D and Rule 144.

[60] Public Law 98–440, 98 Stat. 1689.

[61] *See Shelf Registration,* Release No. 33–6499 (Nov. 17, 1983) [48 FR 5289]. Mortgage related securities, including such securities as mortgage-backed debt and mortgage participation or pass through certificates, may be offered on a delayed basis under Rule 415. *See* 17 CFR 230.415(a)(1)(vii). SMMEA was enacted by Congress to increase the flow of funds to the housing market by removing regulatory impediments to the creation and sale of private mortgage-backed securities. An early version of the legislation contained a provision that specifically would have required the Commission to create a permanent procedure for shelf registration of mortgage related securities. The provision was removed from the final version of the legislation, however, as a result of the Commission's decision to adopt Rule 415, implementing a shelf registration procedure for mortgage related securities. *See* H.R. Rep. No. 994, 98th Cong., 2d Sess. 14, reprinted in 1984 U.S. Code Cong. & Admin. News 2827; *see also* Release No. 33–6499 (Nov. 17, 1983) [48 FR 52889], at n. 30 (noting that mortgage related securities were the subject of pending legislation).

[62] The term, "mortgage related security" is defined to include "a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization." 15 U.S.C. 78c(a)(41).

[63] *See Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 32461].

[64] The security is an "investment grade security" for purposes of form eligibility if, at the time of sale, at least one NRSRO has rated the security in one of its generic rating categories which signifies investment grade, typically one of the four highest categories. *See* General Instructions I.B.2 and I.B.5 of Form S–3.

[65] Under Securities Act Rule 415, securities registered on Form S–3 or Form F–3 may be offered on a continuous or delayed basis. *See* 17 CFR 230.415(a)(1)(x).

[66] *See* Release No. 33–6964.

[67] *See id.* The 1992 release explained that the Commission did not intend to change the character or quality of the disclosure that is customary in these offerings and explained generally the type of disclosure that was expected for ABS offerings.

[68] *See* 2004 ABS Adopting Release. In 2003, we raised the question whether to eliminate ratings reliance from our shelf eligibility requirements in a concept release where we requested comment on alternatives to the investment grade ratings component of Form S–3 eligibility for ABS and debt offerings. *See Rating Agencies and the Use of Credit Ratings under the Federal Securities Laws,* Release No. 33–8236 (Jun. 4, 2003) [68 FR 35258].

[69] We noted in 2004, however, that the Commission was engaged in a broad review of the role of credit ratings agencies in the securities markets and the use of credit ratings for regulatory purposes. *See* Section II.A.3.c of the 2004 ABS Adopting Release.

[70] In addition to investment grade rated securities, an ABS offering is eligible for Form S–3 registration only if the following conditions are met: (i) Delinquent assets must not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date; and (ii) with respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the

Continued

In 2008, we proposed several changes to our rules and form requirements that reference investment grade ratings (the "2008 Proposing Release"), including a proposal to revise shelf eligibility criteria for ABS offerings and primary offerings of non-convertible debt by replacing the investment grade ratings component.[71] Our proposal would have replaced investment grade ratings with a requirement that sales registered on Form S–3 be made in minimum denominations and only to qualified institutional buyers, as defined in Rule 144A. We reopened comment on the 2008 Proposing Release on October 5, 2009.[72]

We received comment letters from 35 commenters on the 2008 Proposing Release. Commenters generally opposed the proposed amendments that would have replaced investment grade ratings references in certain rules and the shelf eligibility criteria.[73] Some commenters on the proposed amendments to ABS shelf eligibility noted that the proposed eligibility requirements would result in many ABS issuers registering offerings on Form S–1[74] or selling the securities privately.[75] After considering comments, we are withdrawing this part of the 2008 proposal and are proposing different replacements to the ratings requirement in the shelf eligibility criteria for ABS issuers that we believe are better measures of quality, and therefore, are more appropriate eligibility criteria. We are also proposing several changes to restructure the registered ABS offering process.

B. New Registration Procedures and Forms for Asset-Backed Securities

1. New Shelf Registration Procedures

Under existing rules, as with offerings of other types of securities registered on Form S–3 and Form F–3, the shelf registration statement for an offering of asset-backed securities will often be effective before a takedown is contemplated. Pursuant to existing Securities Act Rules 409 and 430B,[76] the prospectus in the registration statement may omit the specific terms of a takedown if that information is unknown or not reasonably available to the issuer when the registration statement is made effective.[77] For ABS offerings off the shelf, because assets for a pool backing the securities will not be identified until the time of an offering, information regarding the actual assets in the pool and the material terms of the transaction are sometimes only included in a prospectus or prospectus supplement that is filed with the Commission the second business day after first use.[78] This information includes information about the pool, underwriting criteria for the assets and exceptions made to the underwriting criteria, identification of the originators of the assets and other information that is keyed off the identification of specific assets for the pool.

We recognize that asset-backed issuers have expressed the need to use shelf registration to access the capital markets quickly.[79] We understand that the creation of an asset pool to support securitized products is a dynamic and ongoing process in which changes can take place up until pricing. As a result, our proposals today generally maintain the fundamental framework of shelf registration for ABS offerings.

However, we also recognize that it is important for investor protection that ABS investors have not just adequate information to make an investment decision, but also adequate time to analyze the information and the potential investment. For the most part, each ABS offering off of a shelf registration statement involves securities backed by different assets, so that, in essence, from an investor point of view, each offering is like an initial public offering with respect to the ABS issuer. Information regarding the assets is an important piece of information for investors to use to conduct an analysis of the ability of those underlying assets to generate sufficient funds to make payments on the securities. Furthermore, some have noted the lack of time to review transaction-specific information as hindering the investors' ability to conduct adequate analysis of the securities.[80] We believe that a more orderly process for asset-backed securities offerings with improved investor protections, where investors and underwriters have additional time to assist their review of offerings, may be needed, even if issuers may not always be able to time their offering in a way that takes advantage of short term price peaks. Therefore, we are proposing rules designed to increase the amount of time that investors have to review information regarding a particular shelf takedown and promote analysis of asset-

physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date. *See* General Instruction I.B.5 of Form S–3. Moreover, to the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on Form S–3 subject to the requirements of Section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to Section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). Such material (except for certain enumerated items) must have been filed in a timely manner. *See* General Instruction I.A.4 of Form S–3. We are not proposing changes to these other eligibility conditions.

[71] *See* the 2008 Proposing Release.

[72] *See* Release No. 33–9069. We also held a Credit Rating Agency Roundtable on April 15, 2009 to consider further information on ratings and rating agencies. Materials related to the roundtable, including an archived webcast and a transcript of the roundtable, are available at *http://www.sec.gov/spotlight/cra-oversight-roundtable.htm.*

[73] *See* comment letters from American Bar Association (ABA); American Electric Power, American Securitization Forum (ASF), Arizona Public Service Company, Boeing Capital Corporation (Boeing), Cadwalader Wickersham & Taft LLP (Cadwalader), Charles Schwab, Constance Curnow, Davis Polk & Wardwell (Davis Polk), Debevoise & Plimpton (Debevoise), Dewey & LeBoeuf, Dominion Resources, Inc., Edison Electric Institute, Incapital, LLC, Manulife Financial Corporation, Mayer Brown LLP (Mayer), Merrill Lynch Depositor, Inc., Mortgage Bankers Association, PNM Resources, Inc., Securities Industry and Financial Markets Association, Southern Company, WGL Holdings, Inc., and Wisconsin Energy Corporation. The public comments are available at *http://www.sec.gov/comments/s7-18-08/s71808.shtml.*

[74] 17 CFR 239.11.

[75] *See, e.g.,* comment letters from ABA dated September 12, 2009; ASF; Boeing; Cadwalader; Davis Polk; Debevoise; and Mayer. As the proposal in the 2008 Proposing Release did not add requirements to the safe harbors for privately-issued asset-backed securities, these commenters did not assess whether additional requirements would have changed the result.

[76] 17 CFR 230.409 and 17 CFR 230.430B.

[77] The prospectus disclosure in the registration statement is often presented through a "base" or "core" prospectus and a prospectus supplement. We are proposing to eliminate this type of presentation for asset-backed issuers. *See* Section II.D.1. below.

[78] An instruction to Rule 424(b) requires that a form of prospectus or prospectus supplement relating to a delayed offering of mortgage-backed securities or an offering of asset-backed securities be filed no later than the second business day following the date it is first used after effectiveness in connection with a public offering or sales, or transmitted by a means reasonably calculated to result in filing with the Commission by that date.

[79] Notably, according to EDGAR, in 2006 and 2007, only three ABS issuers filed registration statements on Form S–1 that went effective.

[80] *See, e.g.,* Section I.B. of CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, *U.S. Financial Regulatory Reform: The Investor's Perspective,* July 2009 (noting that securitized products are sold before investors have access to a comprehensive and accurate prospectus, noting that each ABS offering involves a new and unique security, and recommending that the Commission adopt rules to improve the timeliness of disclosures to investors); Dr. William W. Irving's testimony concerning "Securitization of Assets: Problems and Solutions" Before the Senate Banking, Housing and Urban Affairs Subcommittee on Securities, Insurance, and Investment (Oct. 7, 2009), at 11 (recommending that there be ample time before a deal is priced for investors to review and analyze a full prospectus and not just a term sheet). The testimony is available at *http://banking.senate.gov/public/.*

backed securities in lieu of undue reliance on security ratings for shelf offerings.

(a) Rule 424(h) Filing

We are proposing to require an asset-backed issuer using a shelf registration statement on proposed Form SF–3 to file a preliminary prospectus containing transaction-specific information at least five business days in advance of the first sale of securities in the offering. This requirement, if adopted, would allow investors additional time to analyze the specific structure, assets, and contractual rights regarding each transaction. Requiring that such information be filed at least five business days before the first sale of securities in the offering is designed to balance the interest of ABS issuers in quick access to the capital markets and the need of investors to have more time to consider transaction-specific information. We considered whether a longer minimum time period than five business days would be more appropriate.[81] However, we are proposing five business days, because we preliminarily believe that the proposals discussed below that require the filing of standardized and tagged loan-level information and a computer program that gives effect to the cash flow provisions of the transaction agreement could reduce the amount of time required by investors to consider transaction specific information. Our requests for comment on the proposed new procedures below include questions about the appropriate amount of time investors need to consider transaction specific information.

Under our proposal, with respect to any takedown of securities in a shelf offering of asset-backed securities where information is omitted from an effective registration statement in reliance on newly proposed Rule 430D, a form of prospectus meeting certain requirements must be filed with the Commission by a means reasonably calculated to result in filing in accordance with proposed Rule 424(h) (the "Rule 424(h) filing" or "Rule 424(h) prospectus") at least five business days prior to the first sale of securities in the offering.[82] If the preliminary prospectus is used earlier than such five business days to offer the securities, then it must be filed by the second business day after first use.

As discussed below, we are proposing new Rule 430D to provide the framework for shelf registration of ABS offerings. The proposed rule explains what information may be omitted from the prospectus filed with the effective registration statement and what information must be contained in the Rule 424(h) filing. Under new Rule 430D, as proposed, the Rule 424(h) filing must contain substantially all the information for the specific ABS takedown previously omitted from the prospectus filed as part of an effective registration statement,[83] except for the information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price. The information required to be filed pursuant to proposed Rule 424(h) would include, among other things, information about the specific asset pool that is backing the securities in the takedown and the waterfall computer program discussed in Section III below. Proposed Rule 430D would provide that a material change in the information provided in the Rule 424(h) filing, other than offering price, would require a new Rule 424(h) filing and therefore, a new five business-day waiting period.[84] The new Rule 424(h) filing would be required to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information. For example, if a credit enhancement (that was contemplated in the registration statement) is added to the transaction after a Rule 424(h) filing is filed, we would expect the issuer to file a new Rule 424(h) filing that reflects the credit enhancement and wait an additional five business days before the first sale in the offering. This is designed to provide investors with information and time sufficient to conduct a thorough analysis of new information relating to the offering.

So long as a form of prospectus has been filed in accordance with Rule 430D, ABS issuers could continue to utilize a free writing prospectus or ABS informational and computational materials in accordance with existing rules.[85] However, because we believe that investors should have access to a comprehensive prospectus that contains substantially all of the required information, a free writing prospectus or ABS informational and computational materials could not be used for the purpose of meeting the requirements of proposed Rule 424(h). For liability purposes, a Rule 424(h) filing would be deemed part of the registration statement on the date such form of prospectus is filed with the Commission, or if the preliminary prospectus is used earlier than five business days in advance of the first sale of securities in the offering, then the date of first use.[86] A final prospectus for ABS offerings would continue to be filed pursuant to Rule 424(b). Consistent with Rule 430B for shelf offerings of corporate issuers, under proposed Rule 430D the filing of the final prospectus under Rule 424(b) would trigger a new effective date for the registration statement relating to the securities to which such form of prospectus relates for purposes of liability under Section 11 of the Securities Act.[87]

[81] Some have suggested that investors be provided with up to two weeks to analyze asset information. *See, e.g.,* Joshua Rosner, *Securitization: Taming the Wild West,* Roosevelt Institute's *Make Markets be Markets* (Mar. 3, 2010), at 73.

[82] Sale includes "contract of sale." *See* fn. 31 and accompanying text of the Offering Reform Release.

[83] For example, the Rule 424(h) filing would include the waterfall computer program that we are proposing to require, as discussed in Section III.B.1 of this release. We believe that investors need adequate time to run the waterfall computer program using the asset data filed with the Rule 424(h) filing.

[84] Whether a change is material for purposes of the proposed requirement would depend on the facts and circumstances. *See TSC Industries, Inc.* v.*Northway, Inc.,* 426 U.S. 438, 448–449 (1976). *See also Basic* v. *Levinson,* 485 U.S. 224, 231 (1988).

[85] ABS informational and computational materials, as defined in Item 1101 of Regulation AB [17 CFR 229.1101], may be used in accordance with Securities Act Rules 167 and 426 [17 CFR 230.167 and 17 CFR 230.426]. Materials that constitute a free writing prospectus, as defined in Securities Act Rule 405 [17 CFR 230.405] may be used in accordance with Securities Act Rules 164 and 433 [17 CFR 230.164 and 17 CFR 230.433].

[86] This is consistent with the existing provisions for other preliminary prospectuses. *See* Rule 430B(e). We also propose in this release to repeal the exception to the prospectus delivery requirement in Exchange Act Rule 15c2–8(b) for shelf-eligible asset-backed securities. *See* Section II.C. below.

[87] 15 U.S.C. 77k. The proposed rule does not change the treatment of ABS offerings for purposes of Rule 159 [17 CFR 230.159]. Rule 159 provides the following:

(a) For purposes of section 12(a)(2) of the Securities Act only, and without affecting any other rights a purchaser may have, for purposes of determining whether a prospectus or oral statement included an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

(b) For purposes of section 17(a)(2) of the Act only, and without affecting any other rights the Commission may have to enforce that section, for purposes of determining whether a statement includes or represents any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading at the time of sale (including, without limitation, a contract of sale), any information conveyed to the purchaser only after such time of sale (including such contract of sale) will not be taken into account.

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(b) New Rule 430D

Currently, the framework for ABS shelf offerings, along with shelf offerings for other securities, is outlined in Rule 430B of the Securities Act. Rule 430B describes the type of information that primary shelf eligible and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering [88] and include instead in a prospectus supplement, Exchange Act report incorporated by reference, or a post-effective amendment.[89] We are proposing new Rule 430D to provide the framework for delayed shelf offerings of asset-backed securities pursuant to Rule 415(a)(1)(vii), as proposed to be revised. If we adopt Rule 430D, existing Rule 430B would no longer apply to ABS offerings.

Proposed Rule 430D would require that with respect to each offering, substantially all the information previously omitted from the prospectus filed as part of an effective registration statement, except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price, be filed at least five business days in advance of the first sale of securities in the offering in accordance with Rule 424(h). Thus, an issuer may not omit such information (other than offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price) from the Rule 424(h) filing.

We are proposing conforming revisions to the undertakings that are required by Item 512 of Regulation S–K [90] in connection with a shelf registration statement. For the most part, ABS issuers would continue to provide the same undertakings that are currently required of ABS issuers conducting shelf offerings. We are proposing a conforming revision to the undertakings relating to the determination of liability under the Securities Act as to any purchaser in the offering. It would require an undertaking that each prospectus filed by the registrant pursuant to Rule 424(h) would be deemed part of the registration statement as of the date the prospectus was deemed part of, and included in, the registration statement (i.e., the date it was filed with the Commission, or, if the prospectus was used and filed earlier, the second business day after first use).[91] Also, under our proposed revision to Item 512 of Regulation S–K, an issuer would be required to undertake to file the information required to be contained in a Rule 424(h) filing with respect to any offering of securities.

Request for Comment

- We request comment on our proposal to establish a minimum period of time available to investors to review registered ABS offering prospectuses. Are we correct that investors need additional time? Would the proposed timeline for filing the proposed preliminary prospectus at least five business days prior to the date of first sale pose problems for market participants? If so, how could we address those concerns while still providing investors with sufficient time to analyze the securities?
- Is the proposed five business days sufficient time for investors? Should the required minimum number of days that the Rule 424(h) filing must be filed before the first sale be longer (*e.g.,* six, seven, eight, or ten business days) or shorter than what we are proposing (*e.g.,* two or four business days)? Given the increased amount of information that would be made available to investors under this proposal, would investors need more time to consider transaction specific information? Is our belief that the filing of standardized and tagged asset-level information and a computer program that gives effect to the cash flow provisions of the transaction agreement could reduce the amount of time investors need to consider transaction-specific information correct?
- We are cognizant that having a transaction exposed to the markets for some period of time causes concerns to some issuers and underwriters in some instances. However, we also note situations in which transaction-specific information regarding ABS is provided to other deal participants for a longer period prior to selling the securities seemingly with no or minimal effect on the issuer's ability to sell securities. We note, in particular, that the Federal Reserve Board requires information to be provided to it regarding the assets pledged to the Term Asset-Backed Securities Loan Facility (TALF) at least three weeks prior to the subscription date.[92] Similarly, rating agencies receive information prior to rating transactions.[93] If there are issues raised by exposing the transaction publicly to the markets, please provide us with specific information about the concerns and ways we can revise the proposal to address them.
- Under our proposal, the Rule 424(h) filing would not be required to include information dependent on pricing. Is that appropriate? If not, what information should be required to be included and how would an issuer have access to the information in the timeframe that we are proposing?
- Under our proposal, if a material change to the disclosure other than to pricing information occurs, the issuer would be required to file a new Rule 424(h) prospectus with updated information. Is this requirement specific enough? Should we, instead or in addition, specify particular changes that would trigger a filing, or conversely, that would not trigger a filing? Should we, for example, provide that a new Rule 424(h) filing would be required if the asset pool has changed by a certain amount? If so, what should that amount be (*e.g.,* 1%, 5%, or 10% of the final asset pool)? How would other changes be described, such as changes to the waterfall? Would it be appropriate to allow a material change without requiring a new Rule 424(h) filing and a new five-day waiting period? Should the new Rule 424(h) filing be required as proposed to reflect the change and contain substantially all the information required to be in the prospectus, except for pricing information? Should we only require that the change be reflected in a supplement?
- The requirement to file a new Rule 424(h) filing would trigger another five-day waiting period before the first sale. Is this approach appropriate and workable? If the issuer is required to re-file the preliminary prospectus, as proposed, should the issuer be required to wait another five business days before the first sale, as proposed? If not, how long should the issuer be required to wait?

(c) For purposes of section 12(a)(2) of the Act only, knowing of such untruth or omission in respect of a sale (including, without limitation, a contract of sale), means knowing at the time of such sale (including such contract of sale).

[88] Under Rule 430B, a form of prospectus filed as part of a registration statement for offerings of asset-backed securities may omit information unknown or not reasonably available pursuant to Rule 409.

[89] *See also* Section V.B.1.b of the Offering Reform Release.

[90] 17 CFR 229.512.

[91] This is consistent with the existing undertaking in Item 512 for prospectuses that are filed pursuant to Rule 424(b)(3). *See* Item 512(a)(5)(i)(A) of Regulation S–K [17 CFR 229.512(a)(5)(i)(A)].

[92] Each issuer wishing to bring a TALF-eligible ABS transaction to market is required to provide, at least three weeks prior to the subscription date, information to the Federal Reserve Bank of New York including, but not limited to, all data on the transaction the issuer has provided to any NRSRO.

[93] *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Release No. 34–59342 (Feb. 2, 2009) [74 FR 6456].

• Are there any aspects of the Rule 424(h) filing that we should specify must be substantially set at the time it is required to be filed?

• Are there any changes, other than the ones we are proposing, to the Item 512 undertaking that should be made? Is our proposed change to incorporate the Rule 424(h) filing in the undertakings relating to liability so that the Rule 424(h) filing shall be deemed part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement appropriate?

• We have designed the proposed process for ABS shelf registration to strike a balance between facilitating registered ABS offerings and providing investors a meaningful opportunity to analyze the securities. Would our proposal to require that the Rule 424(h) prospectus be filed at least five business days before the first sale make shelf registration sufficiently less attractive to issuers that they would avoid the registered market? If so, are there ways to address this concern? Below, we are proposing to require more disclosure for private offerings of asset-backed securities that rely on the Commission's safe harbors that allow issuers to rely on an exemption from registration. Should we impose even more restrictions on private offerings of asset-backed securities than what is proposed below? For example, should we condition reliance on Rule 506 of Regulation D on a limitation of the total number of purchasers in an ABS offering, even for offerings to accredited investors or qualified institutional buyers? Alternatively, should we impose fewer restrictions on private offerings of asset-backed securities?

• Should we also require, or require instead, that the initial purchaser or investor hold the securities for a period of time prior to resales in reliance on Rule 144A to better ensure that such resales of asset-backed securities are not a distribution? Could that better ensure that the public registered ABS market operates appropriately and that the existing safe harbors do not inappropriately erode the public markets? If we were to add these additional restrictions on private offerings, what would be the impact on the broader market for structured securities? Would requiring a holding period discourage investors from purchasing ABS in exempt private placements? Would these offerings all be done as public deals, or would these offerings cease to be conducted at all? Should we provide for fewer restrictions—for example, should we require a subset of loan-level disclosures in the context of an exempt private offering? Should issuers or sponsors have the option of providing only certain information? Or would these rules reduce the aggregate amount of transactions? What would be the economic effect?

2. Proposed Forms SF–1 and SF–3

In order to distinguish the ABS registration system from the registration system for other securities, we are proposing to add new registration forms that would be used for any sales of a security that meets the definition of an asset-backed security, as defined in Item 1101 of Regulation AB.[94] These new forms, which would be named Form SF–1 and Form SF–3,[95] would require all the items applicable to ABS offerings that are currently required in Form S–1 and Form S–3 as modified by the proposed amendments noted below. Offerings that qualify for delayed shelf registration[96] would be registered on proposed Form SF–3, and all other offerings would be registered on Form SF–1.[97]

Proposed Form SF–1 would not contain all the items that are currently required by Form S–1. Specifically, the proposed form would not include the instructions as to summary prospectuses, as we do not believe that the summary prospectus instructions are relevant for ABS offerings. Also, we are proposing to substitute the item in existing Form S–1 permitting incorporation by reference by reporting companies of previously filed Exchange Act reports and documents with an item that is more tailored to asset-backed securities on proposed Form SF–1. As discussed in Section I.D.1 below, we are proposing that ABS issuers file a single prospectus for each takedown with all of the information required by Regulation AB because we believe ABS offerings are more closely akin to initial public offerings. Therefore, we are proposing to limit incorporation by reference to certain disclosures. In particular, as discussed below,[98] we are proposing to permit an ABS issuer to incorporate by reference into proposed Form SF–1 information by the time of effectiveness of the registration statement the information that is required to satisfy certain disclosure requirements (*i.e.,* static pool information filed pursuant to Item 6.08 of Form 8–K, asset data filed pursuant to Item 6.06 of Form 8–K, and the waterfall computer program filed pursuant to Item 6.07 of Form 8–K).[99] We also are proposing to permit ABS issuers structured as revolving asset master trusts to incorporate by reference certain asset-level disclosures that would have been provided in previously filed Form 10–Ds.[100]

We are proposing to revise some disclosure requirements that are currently located in Form S–3 but would be moved to proposed Form SF–3. As discussed in the sections immediately following this discussion, we are proposing changes to shelf eligibility for ABS issuers, which will now become the eligibility criteria for proposed Form SF–3. In addition, we are proposing to change an eligibility requirement in existing Form S–3 relating to delinquent filings of the depositor or an affiliate of the depositor for purposes of proposed Form SF–3. For Form S–3, an issuer is not eligible for registration on the form if the depositor or an affiliate of the depositor, with respect to a class of asset-backed securities involving the same asset class, has not filed the Exchange Act reports required to be filed or has not filed such reports in a timely manner for a period of twelve months prior to the filing of the registration statement.[101] However, for certain specified reports, including reports on Form 8–K pursuant to Item 6.05, untimely filing does not result in loss of eligibility.[102] We are proposing to repeal the existing exception from the filing timeliness requirement for Item 6.05 Form 8–K reports. Item 6.05 Form 8–K reports, which we discuss in further detail below, are required to be filed if there is a change in the asset pool characteristics from the description of the asset pool provided in the final prospectus and thereby provide important information regarding the composition of the assets. Under proposed Form SF–3, the untimely filing of an Item 6.05 Form 8–K report by the depositor or affiliate of the depositor, with respect to a class of asset-backed securities involving the same asset class, during the twelve

[94] 17 CFR 229.1101(c).

[95] The proposed forms would be referenced in 17 CFR 239.44 and 17 CFR 239.45.

[96] In this release, we also refer to such offerings as shelf offerings.

[97] We also propose to make conforming changes throughout our rules to refer to the new forms, as appropriate. *See, e.g.,* proposed revisions to Securities Act Rules 167 and 190(b)(1) and the exhibit table in Item 601 of Regulation S–K.

[98] *See* Sections III.A.4., III.B.1.d., and III.E.4. below.

[99] *See* General Instruction IV. and Item 10 of proposed Form SF–1 and Item 11 of proposed Form SF–3.

[100] We are proposing to require ABS backed by floorplan receivables to include the performance information of assets that were part of the pool prior to the current offering. *See* Section III.A.1.e.iv. below.

[101] General Instruction I.A.4 of Form S–3.

[102] *Id.*

calendar months and any portion of a month immediately preceding the filing of the registration statement would result in the loss of form eligibility for up to twelve months from the time the report was due.[103] As discussed in Section V.C.1 below, we also are proposing to lower the threshold amount of change that would trigger a filing requirement for Item 6.05 Form 8–K reports from five percent of any material pool characteristic to one percent.

Request for Comment

- We request comment on our proposal to move the registration statement item requirements for ABS offerings into new forms that would apply only to asset-backed issuers. Would the proposed new forms create any difficulties? If so, please specify.
- We are proposing to move the items applicable to asset-backed securities from Forms S–1 and S–3 to proposed Forms SF–1 and SF–3, with some exceptions noted. Do the proposed forms omit any requirement for asset-backed issuers that should be included? Do any of the requirements need further revisions?
- The proposed Form SF–1 would not include the instructions as to summary prospectuses that are included in Form S–1. Is there any reason we should provide these instructions in proposed Form SF–1 for ABS issuers?
- Are our proposed instructions for incorporation by reference appropriate?
- Should we repeal the existing carve-out for the untimely filing of an Item 6.05 Form 8–K, as we are proposing to do? Why or why not?

3. Shelf Eligibility for Delayed Offerings

We are proposing to eliminate the ability of ABS issuers to establish shelf eligibility in part by means of an investment grade credit rating. This is part of our broad ongoing effort to remove references to NRSRO credit ratings from our rules in order to reduce the risk of undue ratings reliance and eliminate the appearance of an imprimatur that such references may create.[104] In place of credit ratings, we are proposing to establish four shelf eligibility criteria that would apply to mortgage related securities and other asset-backed securities alike. These proposed requirements, along with the other current requirements,[105] would determine an asset-backed issuer's eligibility to register for a delayed shelf offering. Similar to the existing requirement that the securities must be investment grade, the proposed requirements are designed to provide for a certain quality and character for asset-backed securities that are eligible for delayed shelf registrations.

(a) Risk Retention

Risk retention requirements have been discussed by some market participants as one potential way to improve the quality of asset-backed securities by better aligning the incentives of the sponsors and originators of the pool assets with investors' incentives. A chain of securitization may involve multiple participants that may serve the function of originator, sponsor, servicer, or trustee.[106] One concern that has been debated is whether the model of securitization where loan originators do not hold the loans they originate but instead repackage and sell them as securities may create a misalignment of incentives between the originator of the assets and the investors in the securities, which misalignment may have contributed to lower quality assets being included in securitizations that did not have continuing sponsor exposure to the assets in the pool.[107] The theory underlying a risk retention requirement is that if a sponsor retains exposure to the risks of the assets, the sponsor is more likely to have greater incentives to include higher quality assets in the pool. Because we believe that securitizations with sponsors that have continuing risk exposure would likely be higher quality than those without, we are proposing, among other things, to replace the investment grade ratings requirement in the ABS shelf eligibility conditions with a condition that the sponsor of any securitization retain risk in each tranche of the securitization on an ongoing basis. Such a requirement has colloquially been referred to as "risk retention," or "skin in the game." We believe that the proposed risk retention requirement for shelf eligibility would distinguish the types of securities that are of a sufficient quality and character to be shelf eligible while avoiding the possibility of undue reliance on ratings.

Risk retention requirements are being considered in the U.S. and internationally. In the U.S., proposals with such requirements have come in several different forms.[108] Risk retention requirements have recently garnered support.[109] On the other hand, some are

[103] We are also proposing to amend Rule 415 to require a quarterly evaluation of form eligibility on proposed Form SF–3. *See* Section II.B.3.e. below.

[104] *See* Release No. 33–9069.

[105] *See* fn. 70 above.

[106] Under Regulation AB, "servicer" means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of the asset-backed securities. The term "servicer" does not include a trustee for the issuing entity or the asset-backed securities that makes allocations or distributions to holders of the asset-backed securities if the trustee receives such allocations or distributions from a servicer and the trustee does not otherwise perform the functions of a servicer. *See* Item 1101(j) of Regulation AB. In some cases, one party may act in two or more different roles, such as when a bank and/or affiliated party of the bank serves in all three functions of originator, sponsor, and servicer of an ABS offering. In contrast, in the case of so-called aggregators, the sponsor acquires loans from many other unaffiliated sellers before securitization.

[107] *See, e.g.,* European Central Bank, *The Incentive Structure of the 'Originate to Distribute Model,'* December 2008, at 5 (noting that securitization is fundamentally vulnerable to certain adverse behavior since agents seek to maximize their benefits while principals cannot fully observe and control the agents' actions); Amiyatosh Purnanandam, "Originate-to-Distribute Model and the Subprime Crisis" (Apr. 27, 2009), available at *http://ssrn.com/abstract=1167786.*

[108] The Federal Deposit Insurance Corporation ("FDIC") recently solicited public comments regarding proposed amendments to a "safe harbor" rule from the FDIC's statutory authority to disaffirm or repudiate contracts of an insured depository institution ("IDI") with respect to transfers of financial assets by an IDI in connection with a securitization or a participation (the "FDIC Securitization Proposal"). The FDIC Securitization Proposal also includes risk retention requirements for purposes of providing a safe harbor for IDIs, although in a different context from our proposal which would require risk retention as a condition to shelf eligibility. *See* Federal Deposit Insurance Corporation, *Advance Notice of Proposed Rulemaking Regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010* (Jan. 7, 2010) [75 FR 934]. The comment letters are available at *http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html. See also* H.R. 4173, 111th Cong., (bill that would require a creditor or securitizer to retain five percent of the credit risk on any loan that is transferred, sold, or conveyed); Senate proposal, 111th Congress, "Restoring American Financial Stability Act of 2010" (bill that would require five percent risk retention). The Senate bill contemplates joint rulemaking regarding the risk retention requirement with the SEC, the FDIC and the Office of Comptroller Currency and the House bill contemplates joint rulemaking with the SEC, the National Credit Union Administration Board, the Board of Governors of the Federal Reserve system, the Office of the Comptroller of the Currency, the Office of Thrift Supervisors and the FDIC.

[109] *See, e.g.,* CFA Institute Centre for Financial Market Integrity and Council of Institutional Investors, "U.S. Financial Regulatory Reform: The Investor's Perspective," July 2009 (recommending that ABS sponsors should be required to retain a meaningful residual interest in their securitized products). *See, e.g.,* U.S. Department of Treasury, *A New Foundation: Rebuilding Financial Supervision and Regulation,* June 17, 2009; H.R. 1728, 111th Cong. § 213 (2009). In addition, risk retention by originating lenders has been a component of several guaranteed loan programs administered by the United States Department of Agriculture (USDA) since 1972, when amendments to the Consolidated Farm and Rural Development Act (7 USC 1921 *et seq.*) expanded the USDA's lending authority to include guarantees of farm and rural development loans issued by commercial lenders. For example, under its guaranteed farm loan program, the Farm Service Agency can guarantee up to 90% of a loan issued by a commercial lender to an eligible farmer,

concerned that mandatory risk retention will not necessarily result in improved asset quality, may not be calibrated to reflect the risk in any given pool and across different asset classes, and may conflict with various other goals and purposes of securitization.[110]

In addition, in its January 2009 framework, a working group on financial reform in the Group of Thirty recommended that regulated financial institutions be required to retain a meaningful portion of the credit risk of the financial assets they are packaging into securitized and other structured credit products.[111] On May 6, 2009, the European Union adopted an amendment to the Capital Requirements Directive, which sets out the rules for Basel II implementation in Europe, that will, upon effectiveness, prohibit a credit institution from investing in a securitization unless there is disclosure from the originator, sponsor, or original lender that one of them will retain, on an ongoing basis, a net economic interest in the securitized credit risk of at least five percent.

We are proposing to make risk retention a part of the shelf eligibility conditions for asset-backed issuers. Under our proposal, Form SF–3 would require that, as a condition to shelf eligibility, the sponsor or an affiliate of the sponsor retain a net economic interest in each securitization in one of the two following manners:

- Retention of a minimum of five percent of the nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate;[112] or
- In the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.[113]

Under the proposed eligibility requirement, the net economic interest required to be retained to be shelf eligible would be measured at issuance (or at origination in the case of originator's interest), and then maintained on an ongoing basis.[114] Also, proposed Form SF–3 would require disclosure relating to the interest that is retained by the sponsor.[115] Retention of five percent net economic interest is intended to align incentives of sponsors with investors, such that the quality of the assets in the pool or other aspects of the offering is likely to be higher than for a securitization without risk retention, and, thus, should be an appropriate partial substitute for the existing investment grade ratings requirement in the ABS shelf eligibility conditions. If we adopt a risk retention condition to shelf eligibility, we preliminarily believe that five percent is an appropriate amount of risk to require sponsors to retain and balances our goal of requiring some exposure to risk without overburdening the capital structure of sponsors.[116]

In constructing the risk retention shelf eligibility condition, we also considered, but are not proposing, an option of retaining risk through the retention of randomly selected exposures for purposes of meeting shelf eligibility conditions. If issuers retain randomly selected exposures, we believe the economic effects, including incentive alignment, should be approximately the same as retaining a fixed percentage of the nominal amount of each tranche, if the randomization is properly implemented. However, we believe that it would be both difficult and potentially costly for investors and regulators to verify that exposures were indeed selected randomly, rather than in a manner that favored the sponsor.

We believe that the proposed two different ways that a sponsor could retain risk to satisfy the risk retention shelf eligibility condition would likely result in better incentive alignment, and, consequently higher quality securities, than retention of only the residual interest in a securitization.[117] "Horizontal risk retention" in the form of retention of the equity or residual interest could lead to skewed incentive structures, because the holder of only the residual interest of a securitization may have different interests from the holders of other tranches in the securitization and, thus, not necessarily

but that lender must retain the full amount of the unguaranteed portion in its portfolio for the life of the loan. *See* 7 CFR 762.160. Similar conditions are required for guaranteed loan programs administered by the USDA's Rural Housing Service. *See, e.g.,* 7 CFR 3575.4. *See also* comment letter from MetLife on the FDIC Securitization Proposal ("MetLife FDIC Letter") (generally supporting credit risk retention because it aligns interests with investors and noting that retention should represent a vertical pro rata slice of all securitization obligations, as long as retaining the interest does not cause unintended consolidation issues for the issuer) and comment letter from Consumers Union on the FDIC Securitization Proposal (supporting retention of ten percent of an economic interest because it would create stronger incentives for accurate underwriting).

[110] *See, e.g.,* comment letter from American Securitization Forum and comment letter from American Bar Association on the FDIC Securitization Proposal.

[111] *See* Group of Thirty, *Financial Reform: A Framework for Financial Stability* (Jan. 15, 2009), at 51. The Group of Thirty, established in 1978, is a private, nonprofit, international organization composed of representatives of private and public institutions.

[112] Under the proposed condition, no sponsor may purchase or sell a security, derivative, or other financial product or enter into an agreement with any third party, in which the terms or payments (or lack of payment) of any of the loans or other assets that underlie the ABS are a material term of that financial product or agreement, if the financial product or agreement in any way reduces or limits the financial exposure of the sponsor to less than five percent of the nominal amount of the ABS. Thus, hedges of market interest or currency exchange rates, would not be taken into account in the calculation of the sponsor's risk retention for purposes of the net five percent risk retention requirement. Hedges tied to securities similar to the ABS also would not be taken into account in the calculation of the sponsor's risk retention. For instance, holding a security tied to the return of a subprime ABX.HE index would not be a hedge on a particular tranche of a subprime RMBS sold by the sponsor unless that tranche itself was in the index.

[113] Currently, credit card ABS structures typically include an originator's interest, which is pari passu with the investors' interest in the pool of receivables.

[114] In 2009, the EU Commission called on Committee of European Banking Supervisors (CEBS) to provide technical advice on the amendment to the Capital Requirements Directive (*i.e.,* Article 122a of the EU Capital Requirements Directive) which will prohibit a credit institution from investing in a securitization unless there is disclosure from the originator or sponsor that it has retained risk. Among other things, the EU Commission requested the CEBS consider the adequacy of the minimum 5% retention requirement to meet the goal of avoiding misaligned incentives and of mitigating systemic risks from securitization markets. *See* publication of the Committee of European Banking Supervisors, "CEBS today received a call for technical advice-second part on article 122a of the amended CRD," available at *http://www.c-ebs.org/Publications/Calls-for-Advice/2009/CEBS-today-received-a-call-for-technical-advice--s.aspx* and Committee of European Banking Supervisors, "Call for Technical Advice on the Effectiveness of a Minimum Retention Requirement for Securitisations," Oct. 30, 2009.

[115] *See* discussion of proposed requirement relating to sponsor's interest in Section III.C.3. below.

[116] *See* H.R. 4173, 111th Cong., (bill requiring five percent risk retention); Senate proposal, 111th Congress, "Restoring American Financial Stability Act of 2010" (bill requiring five percent risk retention).

[117] A particular issuance of asset-backed securities often involves one or more publicly offered classes as well as one or more privately placed classes. In most instances, the subordinated classes, or residual interests, which are typically privately placed, act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. Cash flows from the pool assets back both the senior classes and the subordinate classes, and thus allocation of the cash flows to the subordinated classes could affect directly or indirectly the publicly offered classes.

result in higher quality securities. The proposed ways that a sponsor could satisfy the risk retention shelf eligibility condition—either by retaining a "vertical" slice of the securitization, by which we mean taking a portion of the economic risk in each class of security that is being offered, or, in the case of revolving exposures, the originator's interest, would create a direct, shared interest with all the investors in the performance of the underlying assets.

We recognize that there are differing views on the effectiveness of risk retention policies as a means to align the incentives of securitization transaction parties with the interests of investors, both as an intrinsic matter and as compared with other alternatives, as well as concerns about the collateral consequences on the securitization markets associated with conditioning shelf eligibility on risk retention. Some note that originators and other financial institutions active in the mortgage securitization chain suffered massive losses in the financial crisis as a result of their direct and indirect exposure to asset underperformance and, therefore, risk retention exposes financial institutions who are sponsors to too much risk.[118] Another criticism of risk retention posits that different forms of risk retention, such as retention of the equity piece, may lead issuers to screen assets that go into the pool differently.[119] One industry group has asserted that other forms of requiring potential loss exposure, such as more stringent representations and warranties regarding the assets in the pool, may be preferable to outright retention of an economic interest in the securities.[120] Nevertheless, we believe it appropriate at this time to propose the risk retention requirement detailed herein, balancing various considerations that will need to be accounted for before reaching any final determination as to the best way to proceed.

Although sponsors in the past may have initially held a portion of the securitization, such retention often had different motivations and different effects than retention as we propose it. In many cases, sponsors held small portions. These portions were often a small horizontal slice of the securitization and, therefore, would have been unlikely to have driven the sponsor to focus on the quality of the loans or other underlying assets in order to protect that interest. Also, retention of that small portion of those securities may have been due to an inability or lack of incentive to sell those securities. This was often because the securities had a lower return or carried lower spread, and thus were of little interest to investors seeking yield, while the higher returning securities were sold. Many of the retained securities were securities backed by similarly ranked tranches of ABS, which magnified rather than diversified risk. It may be the case that originators and/or underwriters underestimated the risk of both higher (senior) and lower (subordinated) tranches, but their retention practices did not result in the sort of overall risk assessment that our proposal would entail.[121] Thus, retaining risk in that manner would have been unlikely to have the same impact on loan originations, risk analysis, or underwriting—and the resultant asset quality—as the risk retention requirement that we are proposing for ABS shelf eligibility.

In keeping with our belief that incentives are best aligned and quality of assets most significantly impacted if the sponsor retains an equal proportion of all tranches or the economic equivalent, we are proposing to require that, if sponsors select the second risk retention option, they retain a claim whose cash flows are at least five percent of those paid to investors, at all times and in all scenarios. This requirement means that the originator's interest must ultimately be a claim to the same pool of assets as the securities held by investors and must be equivalent in seniority to these securities. The originator's interest would, therefore, be the economic equivalent of retaining a fixed proportion of the nominal amount of all tranches held by investors. We understand that it is a typical practice for credit card ABS to retain an originator's interest in the pool.

For both options, we are proposing to require risk retention net of hedge positions directly related to the securities or exposures taken by the sponsor or its affiliate. This would mean that sponsors would not be able to simply "resell" the specific risks related to the retained securities or asset pool underlying them and remain shelf eligible. The purpose of risk retention is to align the sponsor's incentives with the investors' incentives by exposing each of them to the same risks which thereby promotes higher quality securities in ABS shelf offerings than without risk retention by the sponsor. However, we are primarily concerned with the risks that are under the direct or indirect control of the sponsor (such as the quality of the originator's underwriting standards and the extent of the review undertaken to verify the information regarding the assets). Therefore, hedge positions that are not directly related to the securities or exposures taken by the sponsor or affiliate would not be required to be netted under our proposal. Such positions would include hedges related to overall market movements, such as movements of market interest rates, currency exchange rates, or of the overall value of a particular broad category of asset-backed securities.

As noted above, the proposed risk retention shelf eligibility condition would apply to the sponsor or affiliate of the sponsor. Our proposal is intended to provide an incentive for the sponsor to take additional steps to consider the quality of the assets that are securitized by exposing sponsors to the same credit risk that investors will be exposed to. We believe that there may be reasons to impose these risk retention requirements on the sponsor rather than the originator. Where a non-affiliated aggregator acts as the sponsor of a transaction,[122] the costs of monitoring risk retention born by an originator rather than the sponsor may be disproportionately high because the securitization may include many originators where each originator may have contributed a very small part of the assets in the entire pool. In addition, if risk retention were imposed on each originator rather than the sponsor, the amount of risk held by each originator may be small. As such, the incentives afforded through risk retention may be

[118] *See* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform,* May 2009 ("Committee on Capital Markets Regulation Financial Crisis Report"), at 130.

[119] *See, e.g.,* Ingo Fender and Janet Mitchell, "The future of securitisation: How to align incentives?" BIS Quarterly Review, Sept. 2009 available at *http://www.bis.org/publ/qtrpdf/r_qt0909e.pdf* (study that claimed to show having the originator or arranger retain the equity tranche of a securitization may lead to lower screening effort than other retention schemes and that recommended regulators focus on disclosure of the scale and nature of risk retention).

[120] For example, the ASF has proposed model representations and warranties designed to enhance the alignment of incentives of mortgage originators with those of investors in mortgage loans. *See* American Securitization Forum Press Release, "ASF Proposes Risk Retention and Issues Final RMBS Disclosure and Reporting Packages," July 15, 2009, available at *http://www.americansecuritization.com/story.aspx?id=3460.*

[121] *See* Gillian Tett, *Fool's Gold* (2009); International Monetary Fund, *Global Financial Stability Report: Navigating the Financial Challenges Ahead* (Oct. 2009) at 25 (noting that retention of the senior tranche was motivated mainly by difficulties placing them), available at *http://www.imf.org/external/pubs/ft/gfsr/2009/02/pdf/text.pdf.*

[122] *See* discussion in fn. 106 regarding aggregators.

diminished or rendered less effective. With risk retention imposed on sponsors, we believe that sponsors would have the appropriate incentives and mechanisms to ensure that originators' lending standards are consistent with the quality and character of the ABS to be offered off of the shelf. Therefore, we believe it is more appropriate to impose risk retention requirements on the sponsor than the non-affiliated originator.[123]

Under our proposal, a sponsor may still conduct a public offering without risk retention. However, such offering would be required to be registered on proposed Form SF–1 rather than proposed Form SF–3. Those offerings would not be eligible for delayed shelf registration, which would subject them to a longer period before they could be completed since a new registration statement would need to be filed and become effective before an offering could be completed. This would allow additional time for the investors to analyze the offering.[124]

We have also considered other ancillary impacts of our proposed risk retention shelf eligibility condition. For example, we considered the impact of the shelf eligibility condition on financial reporting. We note that the Financial Accounting Standards Board's newly-issued Statements of Financial Accounting Standards No. 166 and 167, contained in FASB's Accounting Standards Codification, Topic 860, Transfers and Servicing, and Topic 810, Consolidation, respectively, change the accounting for transfers of financial assets and the criteria for consolidation of variable interest entities. Substantially all types of special-purpose entities used in asset-backed securitization transactions are, for accounting purposes, variable interest entities.

The accounting guidance for consolidation requires a party to consolidate a variable interest entity if it has a variable interest in the securitization that is a controlling financial interest in the variable interest entity. The accounting guidance specifies that a party has a controlling financial interest if it has variable interests with both of the following characteristics: (a) The power to direct the activities of a variable interest entity that most significantly impact the variable interest entity's economic performance, and (b) the obligation to absorb losses of the variable interest entity (or the right to receive benefits from the variable interest entity) that could potentially be significant to the variable interest entity. Only one party, if any, is expected to have a controlling financial interest in a variable interest entity.

A sponsor that retains an economic interest in each tranche of securities, as we are proposing to require as a condition for shelf eligibility, generally will have a variable interest in the asset-backed securitization entity. However, satisfaction of the proposed risk retention condition would not, by itself, be determinative as to whether a sponsor's variable interests would be a controlling financial interest resulting in consolidation. This is the case because each sponsor will need to evaluate the facts and circumstances related to each particular transaction in light of the FASB's newly-issued guidance, including whether the sponsor has the power to direct the activities that most significantly impact the variable interest entity's economic performance. In some cases, the economic performance of the variable interest entity is most significantly impacted by the performance of the assets that back the securities. In those cases, the activity that most significantly impacts the performance of the assets could be, for example, management of asset delinquencies and defaults or, as another example, selecting, monitoring, and disposing of collateral securities.

We expect the effect of the FASB's newly-issued guidance, together with the effect of satisfaction of our proposed risk retention condition for shelf eligibility (or retention of risk for other reasons), to generally increase the instances in which financial assets (and corresponding financial obligations) continue to be reported in the financial statements of the reporting entity that transfers the financial assets. However, the accounting and consolidation determinations for any particular transaction will depend on judgments about the related facts and circumstances.

We understand that the isolation of the assets comprising the pool from claims of other creditors is important to ABS investors.[125] Currently, credit card issuers typically retain an originator's interest in the pool, so our proposed risk retention shelf eligibility condition should not impact those issuers. Our proposed shelf eligibility requirement of retaining a vertical slice of the securities offered is not intended to have an impact on the isolation of the underlying assets, and we are not aware of any reason to believe it would. The proposed shelf eligibility condition would be to hold an interest in all the securities sold to investors and not the underlying assets directly nor the residual interest. True sale opinions are typically required on the transfer of assets from the originator to the depositor. This proposed shelf eligibility condition would apply to the sponsor, which may not necessarily be the originator. Thus, we believe the shelf eligibility condition should not impact whether there has been a true sale at law of the assets and therefore not change the analysis in the event of bankruptcy, insolvency, receivership or conservatorship of the originator or the sponsor.

Request for Comment

• Should we continue to condition shelf eligibility on requirements that are related to the quality of an ABS offering? Should we, as proposed, replace references to investment grade credit ratings with a risk retention requirement and/or the other criteria discussed below, which are intended to increase the likelihood of higher quality securities than securities that are not required to meet such criteria? Is there a possibility that, by establishing a risk retention requirement or any other criteria based on quality, investors may unduly rely on an appearance that incentives are aligned or that the security has greater quality and consequently be less inclined to expend effort to perform their own analyses creating a similar situation that over-reliance on ratings created? Do the policy bases for shelf eligibility suggest eligibility criteria based on quality of securities are appropriate? Conversely, are expedited offerings inconsistent with an attempt to promote independent analysis of asset-backed securities and reduce the likelihood of undue reliance by investors on credit ratings and therefore, should we not allow ABS offerings to be shelf registered? Should we continue to allow short-form registration for asset-backed securities? Given that each asset-backed security

[123] As discussed in Section III.C.3 below, we also propose to add requirements for disclosure of any interest in the securities that is retained by the sponsor or originator.

[124] As we are proposing to require in Section III.C.3 below, if the offering does not include risk retention by the sponsor, an issuer should provide clear disclosure that the sponsor of the offering is not required by law to retain any risk in the securities and may sell any interest initially retained at any time, as applicable.

[125] *See* The Bond Market Association, International Swaps & Derivatives Association, and Securities Industry Association, "Special Purpose Entities (SPEs) and the Securitization Markets," (Feb. 1, 2002) available at *http://www.isda.org/speeches/pdf/SPV-Discussion-Piece-Final-Feb01.pdf* (noting that securitizations would not take place without the ability to establish SPEs, as investors do not want to take on any risk associated with the seller).

offering off the shelf is akin to an initial public offering with respect to the particular issuer, is the premise of most other short form registration (*i.e.,* that an eligible issuer enjoys a widespread market following) applicable to issuers of asset-backed securities?

• We request comment on risk retention as a condition to eligibility for a delayed ABS shelf offering. Would the proposed risk retention condition address concerns relating to the misalignment of incentives and lead to higher quality securities in registered ABS shelf offerings? Is this an appropriate condition for shelf eligibility? Would the requirement incentivize sponsors to consider the quality of the assets being underwritten and sold into the securitization vehicle?

• Is five percent an appropriate amount of risk for the sponsor to retain in order for the offering to be shelf eligible? Should it be higher (*e.g.,* ten or 15%)? Should it be lower (*e.g.,* one or three percent)? Should the amount of required risk retention be tied to another measure?

• Should the risk retention condition require retention of risk by sponsors (as proposed) or by originators?

• Are there other better ways to address alignment of incentives, and thus quality of the securities, in the aggregator situation? Should we require in that situation that all originators and the sponsor retain some risk?

• Should sponsors be permitted to satisfy the risk retention condition through a different form of risk retention than what is proposed (*e.g.,* retention of first loss position or retention of first loss position in conjunction with retention of some form of vertical slice of the securitization)? Should the risk retention condition relate to retention of the mezzanine tranche? Should the risk retention condition depend on the type and quality of the assets, the structure of the securities and expected economic condition? How could we structure a shelf eligibility condition to take those variables into account?

• We considered but are not proposing an alternative way to satisfy the risk retention shelf eligibility condition based on retention of randomly-selected exposures. We are concerned about the ability to subsequently demonstrate the randomness of the random selection process, including for purposes of monitoring or auditing. Should we include this alternative? Are there any mechanisms that we could adopt that would ensure adequate monitoring of the randomization process if such an alternative were permitted? For example, would our concerns be addressed if the sponsor was required to provide a third party opinion that the selection process has been random and that retained exposures are equivalent (*i.e.,* share a similar risk profile) to the securitized exposures? Would this be sufficient? Would this opinion resemble a credit rating, raising the same issues that rule reliance on credit ratings has had? If this approach were taken, should we impose any requirements on the characteristics of such a third party? Should that third party be considered an expert for purposes of the registration statement?

• If we adopted a random selection alternative, should we require the same disclosure regarding the securitized exposures that are subject to risk retention that is required for the assets in the pool at the time of securitization and on an ongoing basis? Should the shelf eligibility condition require that the retained exposures be subject to the same servicing as the securitized exposures?

• Instead of requiring risk retention as a condition for shelf eligibility, should risk retention be made voluntary for shelf-eligible offerings and issuers only be required to add specified disclosure on the interest that the sponsor or other transaction participants retain? In other words, instead of mandating a certain amount of risk retention, should the requirement be that issuers disclose the percentage of risk retained and in what form? As discussed in greater detail in section III.C.3 of the release, we are also proposing to revise Items 1104, 1108 and 1110 of Regulation AB to require disclosure regarding the sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of that interest. This information would be required for both shelf and non-shelf offerings. If those proposed risk retention disclosure requirements were adopted, would there be a need for or a significant incremental benefit from mandating specific minimum risk retention as a condition of shelf eligibility? Could this incremental benefit be achieved strictly through a market-based mechanism—for example, through fully-disclosed ABS covenants in which the sponsor pre-commits to retain a minimum percentage of the risk of the deal, as opposed to a regulatory requirement? Is the disclosure proposed to be required below sufficient to achieve such a benefit, and if not, what additional disclosures should we require? Would disclosure of the risk retention be a sufficient indicator of shelf-eligible offerings? Should we condition shelf eligibility on requiring the sponsor to covenant that it would maintain a minimum percentage of risk retention? If so, should we provide any limitations on the covenant (e.g., what percentage of tranche or assets must be retained, manner of sponsor's retention, no hedging)? What are the limitations to a market-based mechanism for risk retention? Would such a transaction covenant be credible and enforceable? Would requiring this transaction covenant, along with disclosure of risk retention pursuant to the covenant, sufficiently distinguish those offerings that should be made shelf eligible from those that should not?

• Should net economic interest be measured at the time of origination/issuance as proposed? Would a different measurement date be more appropriate (*e.g.,* the securitization cut-off date)? If the interest were measured at the time of securitization cut-off date, could this cause issuers to change various terms? Is the amount of retention that is required to be retained on an ongoing basis appropriate? Why or why not?

• Should revolving asset master trusts be permitted to satisfy the shelf eligibility requirement by retaining the originator's interest, as proposed? In those cases, should we require as proposed that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively? Is that typical in credit card issuances?

• Are the proposed netting provisions appropriate? Do we need to provide more guidance on what kind of hedges would be netted against the retained risk? Is the proposed "directly related" standard appropriate? Is it sufficiently clear what type of hedges would be allowed? Are there certain forms of hedges that we should indicate would not be netted against the retained risk? Is there any concern that sponsors may inadvertently hedge the economic risk required to be retained? If so, do we need to address that and what is the best way for us to address it? Should we expand the proposed netting provisions to other types of hedging? Should we narrow the proposed netting provisions in any way?

• Should the sponsor be allowed to sell off the retained interest after a certain point in time while non-affiliates of the depositor still hold securities and still remain shelf eligible? If so, when? Would that undermine the purpose of the condition? If not, why not?

• Should there be an alternate condition to the risk retention shelf eligibility condition? For instance, should risk retention apply to RMBS

that are backed by mortgages that are not qualified mortgages, as defined H.R. 1728,[126] a recent legislative proposal?[127] Would it be appropriate to require risk retention unless full documentation has been provided for the assets, the borrower meets a certain minimum credit score, or the terms of the loan do not involve balloon payments? Would such requirements for the mortgages in the pool be a better condition to shelf eligibility than the proposed risk retention shelf eligibility condition? Would such a shelf eligibility condition be difficult to implement? Should we instead condition shelf eligibility on risk retention for loans with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by 1.5 or more percentage points for loans secured by a first lien on a dwelling, or by 3.5 or more percentage points for loans secured by a subordinate lien on a dwelling?[128] How would we structure a condition that relates to specified characteristics of the assets for other asset classes that may not have those variables or those industry standards or have different underwriting standards? What would be the appropriate categories and thresholds? Do those appropriate categories and thresholds differ for different classes? If so, how? Are there securitized asset classes that have no clear or established standards that could demarcate assets meriting shelf eligibility and those that do not?

• The residual interest of a commercial mortgage securitization is typically sold to a third party purchaser, also known as the "B-piece buyer," before the issuance of the securities. In light of this practice, should we permit third party retention of a portion of the securitization to fulfill the shelf eligibility condition? How can we ensure that incentives between the sponsor and investors are aligned in a manner that results in higher quality if the sponsor is permitted to sell off its risk to a third party? For example, should such a shelf eligibility condition require that if a third party will retain the credit risk, the third party purchaser must retain a higher percentage (*e.g.,* ten or 15%) of the risk, rather than five percent? If we allow this approach, should we condition shelf eligibility on a requirement that the third party separately examine the assets in the pool and/or not sell or hedge its holdings? Are there reasons we should, or should not, permit a third party to retain risk in order to satisfy the proposed risk retention condition?[129]

• Should any asset classes or types of securities be exempt from the proposed risk retention shelf eligibility condition or have different risk retention requirements apply? Because of the unique nature of residential mortgages in the financial markets, should risk retention apply to shelf offerings of residential mortgage-backed securities (RMBS) but not offerings of other ABS? If so, what would be an appropriate partial substitute for investment grade rating for shelf eligibility for those other asset classes?

• How would the proposed risk retention shelf eligibility condition impact how sellers account for the transfer of assets in a securitization transaction? Is it desirable to revise the proposal to lessen that impact and if so, how?

• Would the proposal have an impact on the true sale at law of the assets or on the rights of ABS investors as a result of conservatorship, receivership or bankruptcy of the originator or sponsor? If so, how can we revise the proposed risk retention condition to require risk retention without jeopardizing the transfer of assets as a true sale at law or the remoteness of those assets in the event of any bankruptcy, conservatorship, or receivership of the sponsor or originator?

• We note that FINRA Rule 5130 (Restrictions on the Purchase and Sale of IPOs of Equity Securities) generally prohibits FINRA members from selling initial public offerings to broker dealers and their affiliates. The rule is designed to protect the integrity of the public offering process by ensuring that: (1) Members make bona fide public offerings of securities at the offering price; (2) members do not withhold securities in a public offering for their own benefit or use securities to reward persons who can give them future business; and (3) industry insiders do not take advantage of their insider position to purchase IPOs for their own benefit at the expense of the public.[130] Under FINRA's rules, if an ABS is an equity security, it is excluded from the application of the rule if the security is sold pursuant to an exemption under the Securities Act or if it is an offering of investment grade rated ABS. Will this rule have any significant impact on the ability to retain risk as a requirement for shelf eligibility? While our rule changes would eliminate references to credit ratings, sponsors may still obtain ratings, which would potentially qualify

[126] *See, e.g.,* Mortgage Reform and Anti-Predatory Lending Act, H.R. 1728, 111th Congress.

[127] At § 203 in H.R. 1728, a qualified mortgage is defined as a mortgage:

(i) That does not allow a consumer to defer repayment of principal or interest, or is not otherwise deemed a 'non-traditional mortgage' under guidance, advisories, or regulations prescribed by the Federal Banking Agencies;

(ii) That does not provide for a repayment schedule that results in negative amortization at any time;

(iii) For which the terms are fully amortizing and which does not result in a balloon payment, where a 'balloon payment' is a scheduled payment that is more than twice as large as the average of earlier scheduled payments;

(iv) Which has an annual percentage rate that does not exceed the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

(I) By 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is equal to or less than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

(II) By 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that is more than the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

(III) By 3.5 or more percentage points, in the case of a subordinate lien residential mortgage loan;

(v) For which the income and financial resources relied upon to qualify the obligors on the loan are verified and documented

(vi) In the case of a fixed rate loan, for which the underwriting process is based on a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(vii) In the case of an adjustable rate loan, for which the underwriting is based on the maximum rate permitted under the loan during the first seven years, and a payment schedule that fully amortizes the loan over the loan term and takes into account all applicable taxes, insurance, and assessments;

(viii) That does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of the consumer's monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (4), and such rules shall also take into consideration the consumer's income available to pay regular expenses after payment of all installment and revolving debt;

(ix) For which the total points and fees payable in connection with the loan do not exceed 2 percent of the total loan amount, where 'points and fees' means points and fees as defined by Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)); and

(x) For which the term of the loan does not exceed 30 years, except as such term may be extended under paragraph (4).

[128] *See* definition of "higher-priced mortgage loans" in 12 CFR 226.35(a) and Truth in Lending, Federal Reserve System, 73 FR 44522 (July 30, 2008).

[129] In recent years, it was not uncommon for the securitization residual or equity interests to be repackaged into CDOs and sold in the private markets.

[130] NASD notice to Members 03–79 (March 23, 2004) Initial Public Offerings.

the offering for this exemption. Alternatively, FINRA could change its rule to provide the exemption to shelf-eligible ABS rather than investment grade rated ABS. Are there any other regulations or rules that may impact the retention of risk?

(b) Third Party Review of Repurchase Obligations

In the underlying transaction agreements for an asset securitization, sponsors or originators typically make representations and warranties relating to the pool assets and their origination, including about the quality of the pool assets. For instance, in the case of residential mortgage-backed securities, one such representation and warranty is that each of the loans has complied with applicable federal, state and local laws, including truth-in-lending, consumer credit protection, predatory and abusive laws and disclosure laws. Another representation that may be included is that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. Upon discovery that a pool asset does not comply with the representation or warranty, under transaction covenants, an obligated party, typically the sponsor, must repurchase the asset or substitute the non-compliant asset with a different asset that complies with the representations and warranties.

The effectiveness of these contractual provisions has been questioned and lack of responsiveness by sponsors to potential breaches of the representations and warranties relating to the pool assets has been the subject of investor complaint.[131] Transaction agreements typically have not included specific mechanisms to identify breaches of representations and warranties or to resolve a question as to whether a breach of the representations and warranties has occurred.[132] Thus, these contractual agreements have frequently been ineffective because without access to documents relating to each pool asset, it can be difficult for the trustee, which typically notifies the sponsor of an alleged breach, to determine whether or not a representation or warranty relating to a pool asset has been breached. Investors and trustees must rely on the sponsor to provide the necessary documentation about the assets in question. Without further safeguards, the protective quality of the representations and warranties can be compromised.

We are proposing to require as a condition to shelf eligibility, that the pooling and servicing agreement or other transaction agreement for the securitization, which is required to be filed with the Commission,[133] contain a specified provision to enhance the protective nature of the representations and warranties. The specified provision would require the obligated party (*i.e.* the representing and warranting party) to furnish a third party's opinion relating to any asset for which the trustee has asserted a breach of any representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement.[134] The third party opinion would confirm that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement. Because we believe that annual review of the assets is not sufficient to address investors' concerns regarding the enforceability of these provisions in the underlying transaction documents, the opinion would be required to be furnished to the trustee at least quarterly.

To better ensure that the opinion is impartial, we are proposing to require that the third party providing the opinion not be an affiliate of the obligated party. This proposed third party loan review condition to shelf eligibility is designed to help ensure that representations and warranties about the assets provide meaningful protection to investors, which should encourage sponsors to include higher quality assets in the asset pool.[135] As a result, we believe that this proposed condition is an appropriate partial substitute for the investment grade ratings requirement.

Request for Comment

- Is this proposed condition an appropriate shelf eligibility condition for ABS offerings?
- Would this proposed condition, which would only require an undertaking from the issuer, have a measurable benefit to investors? Should we require more assurance that third party opinions have been provided to investors as a condition to shelf eligibility? For example, should we instead condition eligibility on receipt of a certification from the trustee in offerings of the same asset class by the depositor or its affiliates to the effect that all required opinions have been obtained? Should we condition eligibility on a requirement that the trustee provide notice if required third party opinions are not obtained, along with an absence of a notice from the trustee to the effect that there was a failure to provide required opinions?
- Should we provide more guidelines in this shelf eligibility condition regarding the specifics of the provision that would be required to be included in the pooling and servicing or other agreement? If so, what should be detailed?
- Should the proposed condition provide any further specification of the terms of the third party opinion provision?
- Is it appropriate to require, as proposed, the third party to be non-affiliated with the obligated party? Should we specify further any requirements relating to providers of the third party opinion? Should we specify that the third party opinion provider must be an independent expert, similar to what is required in Section 314(d)(1)[136] of the Trust Indenture Act of 1939?[137]

[131] *See* the Committee on Capital Markets Regulation Financial Crisis Report, at 135 (noting that contractual provisions have proven to be of little practical value to investors during the crisis); *see also Investors Proceeding with Countrywide Lawsuit,* Mortgage Servicing News, Feb. 1, 2009 (describing class action investor suit against Countrywide in which investors claim that language in the pooling and servicing agreements requires the seller/servicer to repurchase loans that were originated with "predatory" or abusive lending practices) and American Securitization Forum, *ASF Releases Model Representations and Warranties to Bolster Risk Retention and Transparency in Mortgage Securitizations,* (Dec. 15, 2009), available at *http://www.americansecuritization.com/*. Only large investors of ABS such as Fannie Mae and Freddie Mac have been able to exercise repurchase demands. *See* Aparajita Saha-Bubna, "Repurchased Loans Putting Banks in Hole," *Wall Street Journal* (Mar. 8, 2010) (noting that most mortgages bouncing back to lenders are coming from Fannie Mae and Freddie Mac).

[132] *See also* Moody's Investors Service, Inc., *Special Report: Moody's Criteria for Evaluating Representations and Warranties in U.S. Residential Mortgage Backed Securitizations (RMBS),* November 24, 2008 (noting that historically RMBS have not incorporated mechanisms and procedures to identify breaches of representations and warranties and recommending that post-securitization forensic reviews be conducted by an independent third party for delinquent loans).

[133] ABS issuers are currently required to file these agreements as an exhibit to the registration statement.

[134] *See* proposed General Instruction I.B.1(b) of proposed Form SF–3. Under existing rules, the transaction agreement is required to be filed as an exhibit to the registration statement. *See* Item 601 of Regulation S–K [17 CFR 229.601].

[135] As described below, we also propose to add a disclosure requirement to Exchange Act Form 10–D that would require disclosure of the number of loans that have been presented for repurchase to the party obligated to repurchase the assets under the transaction agreements and the number of those assets that have not been repurchased or replaced.

[136] 15 U.S.C. 77nnn(d)(1).

[137] 15 U.S.C. 77aaa *et seq.*

• Should we specify who should provide the third party opinion or who should not be permitted to provide the opinion? Should diligence firms that provide third party pre-securitization review of a random sample of assets be allowed to provide this opinion? Should we specify that it must be a legal opinion? Would attorneys or law firms be willing to provide this opinion? Why or why not? Would it be appropriate to allow a sponsor's in-house counsel to provide the opinion? If a law firm provides the opinion, should we prohibit the law firm that assisted in the offering from providing such an opinion?

• Based on existing attestation standards of either the PCAOB or AICPA, we do not believe that the proposed opinion could be provided by a public accountant. Would a public accountant be able to provide the proposed opinion under existing attestation standards? If so, which standard or standards should be applied, what level of assurance should be provided and how should the third party opinion be reported?

• Should we provide that the third party opinion must cover all of the representations and warranties in the agreement related to the assets, as proposed? Instead, are there certain representations and warranties that are the most significant that the opinion should cover? Are there types of representations and warranties that the third party opinion should not be required to opine on? For example, are there certain representations and warranties that an attorney or a law firm would not be able to opine on? If so, why?

• Are there any other types of limitations that a third party opinion provider would or should place on the required opinion? In general, what type of exam, assessment or evaluation would a third party opinion provider need to make in order to provide the required opinion?

• How costly or burdensome would it be for an issuer to be required to have a third party provide an opinion to satisfy the proposed shelf eligibility condition? Would this impose too much burden on ABS issuers? Are there ways to lessen the cost?

• Should the third party opinion be required to be furnished annually rather than quarterly, as proposed?

• Should we require that the third party opinion also be filed as an exhibit to an Exchange Act report?

• We are aware of some insurance providers that have offered to insure in the context of mergers and acquisitions any breach of the representations and warranties in the transaction agreement. As an alternative to conditioning ABS shelf eligibility on an undertaking in the transaction agreement that the issuer furnish a third party opinion on assets not repurchased (or instead of the proposed condition), should we allow the issuer to purchase insurance to insure a minimum amount or percentage of the sponsor or originator's obligations under the transaction agreement? If so, what kind of disclosure should we require about the insurance provider? How can we ensure that this alternative method of meeting shelf eligibility adequately improves the incentive structure and therefore the quality of the securities?

(c) Certification of the Depositor's Chief Executive Officer

We also are proposing to establish a requirement that, as a condition to ABS shelf eligibility to replace investment grade ratings criteria, the issuer provide a certification signed by the chief executive officer of the depositor of the securitization regarding the assets underlying the securities for each offering.[138] The certification would require the depositor's chief executive officer to certify that to his or her knowledge, the assets have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. This officer would also certify that he or she has reviewed the prospectus and the necessary documents for this certification.[139]

Because we would frame this ABS shelf eligibility condition as a certification requirement instead of a disclosure requirement, we are using slightly different language than a similar EU disclosure requirement in order to more precisely outline what the officer is certifying to. We are proposing a certification rather than a disclosure requirement because we preliminarily believe the potential focus on the transaction and the disclosure that may result from an individual providing a certification should lead to enhanced quality of the securitization.[140] We believe, as we did when we proposed the certification for Exchange Act periodic reports, that a certification may cause these officials to review more carefully the disclosure, and in this case, the transaction, and to participate more extensively in the oversight of the transaction.[141]

We are proposing that the statements required in the certification would be made based on the knowledge of the certifying officer. As signatories to the registration statement, we would expect that chief executive officers of depositors would have reviewed the necessary documents regarding the assets, transactions and disclosures. Under current requirements, the registration statement for an ABS offering is required to include a description of the material characteristics of the asset pool,[142] as well as information about the flow of funds for the transaction, including the payment allocations, rights and distribution priorities among all classes of the issuing entity's securities, and within each class, with respect to cash flows, credit enhancement and any other structural features in the transaction.[143] The proposed certification would be an explicit representation by the chief executive officer of the depositor of what is already implicit in this disclosure

[138] *See* proposed General Instruction I.B.1(c) to proposed Form SF–3.

[139] This condition is similar to the current disclosure requirements for asset-backed issuers in the European Union. Annex VIII, Disclosure Requirements for the Asset-Backed Securities Additional Building Block, Section 2.1 (European Commission Regulation (EC) No. 809/2004 (April 29, 2004). The EU requires asset-backed issuers to disclose in each prospectus that the securitized assets backing the issue have characteristics that demonstrate capacity to produce funds to service any payments due and payable on the securities. Similarly, under the North American Securities Administrator's Association (NASAA)'s guidelines for registration of asset-backed securities, sponsors are required to demonstrate that for securities without an investment grade rating, based on eligibility criteria or specifically identified assets, the eligible assets being pooled will generate sufficient cash flow to make all scheduled payments on the asset-backed securities after taking certain allowed expenses into consideration. The guidelines are available at *www.nasaa.org.*

[140] For instance, a depositor's chief executive officer may conclude that in order to provide the certification, he or she must analyze a structural review of the securitization. Rating agencies would also conduct a structural review of the securitization when issuing a rating on the securities.

[141] *See Certification of Disclosure in Companies' Quarterly and Annual Reports,* Release No. 34–46079 June 14, 2002. *See also* Testimony Concerning Implementation of the Sarbanes-Oxley Act of 2002 by William H. Donaldson, Chairman U.S. Securities and Exchange Commission Before the Senate Committee on Banking, Housing and Urban Affairs (September 9, 2003) (noting that a consequence of "the combination of the certification requirements and the requirement to establish and maintain disclosure controls and procedures has been to focus appropriate increased senior executive attention on disclosure responsibilities and has had a very significant impact to date in improving financial reporting and other disclosure").

[142] *See* Item 1111 of Regulation AB [17 CFR 229.1111].

[143] *See* Item 202 of Regulation S–K [17 CFR 229.202] and Item 1113 of Regulation AB [17 CFR 229.1113].

contained in the registration statement.[144] This is similar to the certifications of Exchange Act periodic reports required by Exchange Act Rules 13a–14 and 15d–14,[145] which also refer to the disclosure. As with the certifications required by these rules, the language of the proposed certification could not be altered. Instead, any issues in providing the certification would need to be addressed through disclosure in the prospectus.[146] For instance, if the prospectus describes the risk of non-payment, or probability of non-payment, or other risks that such cash flows will not be produced or such payments will not be made, then those disclosures would be taken into consideration in signing the certification.

The chief executive officer of the depositor is already responsible as signatory of the registration statement for the issuer's disclosure in the prospectus and can be liable for material misstatements or omissions under the federal securities laws.[147] An officer providing a false certification potentially could be subject to Commission action for violating Securities Act Section 17.[148] The certification would be a statement of what is known by the signatory at the time of the offering and would not serve as a guarantee of payment of the securities.

Under our proposal, this certification would be an additional exhibit requirement for the shelf registration statement that would not be applicable to the non-shelf registration statement, Form SF–1, and that would be required to be filed by the time the final prospectus is required to be filed under Rule 424.[149] We believe that requiring the chief executive officer of the depositor to sign the certification is consistent with other signature requirements for asset-backed securities.[150]

Request for Comment

- Is our proposal to require certification appropriate as a condition to shelf eligibility? Would investors find the certification valuable?
- Is the proposed language for the certification requirement appropriate? Should we revise it in any way? Should we require that the officer certify that he has a reasonable basis to believe that the assets will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus (rather than certify that the assets have characteristics that provide a reasonable basis to believe that the assets will produce cash flows at times and amounts necessary to service payments as described)?
- Should we identify the level of inquiry required by the executive officer? Should we specify which documents (other than the prospectus) would need to be reviewed for purposes of the certification, and, if so, which ones should we specify?
- Under the proposal, the certifying officer could take into account internal credit enhancements for purposes of evaluating whether the assets have characteristics that provide a reasonable basis to believe they will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus. Should we also permit the certifying officer to also take into account external credit enhancements that may be utilized in the securitization?[151]
- Are there concerns that it is not possible for any individual to be in a position to certify that the assets in the pool have characteristics that provide a reasonable basis to believe they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus? If so, how can we address those concerns or are there steps we should take to ensure that the level of uncertainty in the structure and assets is clear to investors?
- Instead of, or in addition to, requiring a certification, should we require the sponsor to disclose its estimates of default probability for all tranches in the transaction, default probability of loans in the pool, and/or the expected recovery rate on the loans conditional on default? Such estimates would be expected to be consistent with assumptions used in sponsors' internal modeling. Would this disclosure potentially provide investors useful insights into the sponsor's view of the creditworthiness of pool assets and the securitization overall? Would it convey information similar to that contained in credit ratings, which also have, historically, reflected beliefs about default probabilities and expected recovery rates? Do sponsors currently have internal models, or make internal assumptions for valuation purposes, that could be used to readily produce these numbers? If so, should we require that disclosed estimates be consistent with those used in sponsors' internal models? Should we indicate whether or not such disclosures constitute forward-looking statements?
- Should the chief executive officer of the depositor, as proposed, be required to sign the certification, or should an individual in a different position be required to certify? Which individual should be required to sign the certification? Should we instead require that the certification be signed by the senior officer of the depositor in charge of securitization, consistent with other signature requirements for ABS? Given that the depositor is often a special purpose subsidiary of the sponsor, would it be more appropriate to have an officer of the sponsor sign the certification? If so, should it be the senior officer in charge of securitization or some other officer of the sponsor?
- Is it appropriate to require the certification be filed as an exhibit to the registration statement at the time of the final prospectus by means of a Form 8–K?

(d) Undertaking To File Ongoing Reports

Our last proposed new shelf eligibility criterion replacing the investment grade ratings requirement is a requirement that the issuer provide an undertaking to file Exchange Act reports with the Commission on an ongoing basis. Exchange Act Section 15(d) requires an issuer with an effective Securities Act registration statement to file ongoing reports with the Commission. However, the statute also provides that for issuers that do not also have a class of securities registered under the Exchange Act the duty to file ongoing reports is automatically suspended after the first year if the securities of each class to which the registration statement relates are held of record by less than three hundred persons. As a result, typically the reporting obligations of all asset-

[144] This approach is somewhat similar to the approach we took with Regulation AC, which requires certifications from analysts. We noted there that Regulation AC makes explicit the representations that are already implicit when an analyst publishes his or her views—that the analysis of a security published by the analyst reflects the analyst's honestly held views. Section II of *Regulation Analyst Certification,* Release No. 33–8193 (Feb. 23, 2003) [68 FR 9482].

[145] 17 CFR 240.13a–14 and 17 CFR 240.15d–14.

[146] *See* Section III.D.6 of the 2004 ABS Adopting Release.

[147] *See* Securities Act Section 11 (15 U.S.C. 77k(a)) and Exchange Act Section 10(b) (15 U.S.C. 78j(b)).

[148] 15 U.S.C. 77q(a).

[149] *See* proposed revision to Item 601(b) of Regulation S–K.

[150] *See, e.g.,* Item 601(b)(31)(ii) of Regulation S–K (exhibit requirement for ABS regarding certification required by Exchange Act Rules 13a–14(d) and 15d–14(d)).

[151] Examples of external credit enhancement may include third party insurance to reimburse losses on the pool assets or the securities or an interest rate swap or similar swap transaction to provide incidental changes to cash-flow and return.

backed issuers,[152] other than those with master trust structures,[153] are suspended after they have filed one annual report on Form 10–K because the number of record holders falls below, often significantly below, the 300 record holder threshold.[154]

In the proposing release for Regulation AB, we requested comment on whether the ability to suspend reporting under Section 15(d) should be revisited.[155] One investor group recommended conditioning ABS shelf registration upon an issuer agreeing either to continue filing reports under Section 15(d) or to make publicly available on their Web sites copies of reports that contain the information required by Form 10–D.[156] While in 2004 we did not adopt rules that would create ongoing reporting obligations for asset-backed issuers, we did note that the concerns raised by investors confirm the importance to investors of post-issuance reporting of information regarding an ABS transaction in understanding transaction performance and in making ongoing investment decisions.[157]

We are proposing to require as a condition to ABS shelf eligibility that the issuer undertake to file with the Commission reports to provide disclosure as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder, if the issuer were required to report under that section.[158] The issuer's reporting obligation under the undertaking would extend as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions.[159] We believe that ongoing reporting of an asset-backed issuer would provide investors and the markets with transparency regarding many aspects about the ongoing performance of the securities and servicer in its compliance with servicing criteria, among other things. We believe this transparency is important for investors and the market and that it is appropriate to encourage ABS issuers to provide ongoing reports by conditioning shelf eligibility on an undertaking to do so. Thus, we believe this requirement is a reasonable additional condition to shelf eligibility. In conjunction with our proposal to require asset-level information, it may prove even more useful to investors.[160]

In connection with this shelf eligibility condition, we are proposing to require disclosure in the prospectus that is filed as part of the registration statement that the issuer has undertaken and will file with the Commission the reports as would be required pursuant to Exchange Act Section 15(d) and the rules thereunder if the issuer were required to report under that section. Such disclosure would be subject to the same liability as other disclosure in the prospectus.

Also, we are proposing to add a disclosure requirement to Item 1106 of Regulation AB[161] that would require disclosure in a prospectus of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of an undertaking. We are proposing further changes to ABS shelf eligibility requirements in connection with the proposed condition, as discussed in the following section.

Request for Comment

- We request comment on our proposal to require ABS issuers who wish to conduct delayed shelf offerings to undertake to file reports that would be required under Section 15(d) of the Exchange Act for as long as non-affiliates of the depositor hold any securities that were sold in registered transactions. Should we impose such a requirement? Should ABS issuers who use shelf registration be permitted to terminate their reporting obligations at an earlier period in time under shelf eligibility conditions? If so, when?
- Should we require, as proposed, the disclosure of any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file, or file in a timely manner, an Exchange Act report that was required either by rule or by virtue of the proposed undertaking?
- We request comment on all of the four new proposed shelf eligibility conditions in general. Are the proposed shelf eligibility conditions appropriate alternatives to the existing investment grade ratings requirement? If one or more of these proposed criteria are not adopted, should an investment grade rating continue to determine whether or not an ABS issuer is eligible for shelf registration? Or should we prohibit ABS issuers from using shelf registration altogether? What would the impact be if ABS issuers were prohibited from utilizing shelf registration? Do the proposed changes to the shelf registration procedures described above, coupled with the proposed shelf eligibility conditions, mitigate concerns about ABS issuers using shelf registration?
- Should our proposed shelf eligibility conditions (or some subset of them) be used in addition to the existing investment grade ratings requirement rather than replace it?
- What is the aggregate effect of the proposed revisions to shelf eligibility criteria and the shelf registration process for ABS offerings? If these revisions are adopted, would this make using non-shelf registration (Form SF–1) more attractive to an ABS issuer? How would this change the costs and benefits analysis for using shelf registration for ABS issuers? Would this change cause shelf registration to be less attractive or become uneconomic?
- If we continue to condition shelf eligibility, in part, on characteristics of the securities that relate to quality, should we establish shelf eligibility based on different criteria than the four

[152] Under Rule 3b–19 under the Exchange Act [17 CFR 240.3b–19], an issuer is defined in relation to asset-backed securities in the following way:

(a) The depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the "issuer" for purposes of the asset-backed securities of that issuing entity.

(b) The person acting in the capacity as the depositor specified in paragraph (a) is a different "issuer" from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

[153] In a securitization using a master trust structure, the ABS transaction contemplates future issuances of asset-backed securities backed by the same, but expanded, asset pool that consists of revolving assets. Pre-existing securities also would therefore be backed by the same expanded asset pool.

[154] One source noted that in a survey of 100 randomly selected asset-backed transactions, the number of record holders provided in reports on Form 15 ranged from two to more than 70. The survey did not consider beneficial owner numbers. *See* Committee on Capital Markets Regulation Financial Crisis Report, at fn. 349.

[155] *See* Section III.D.2 of *Asset-Backed Securities,* Release No. 33–8419 (May 3, 2004) [69 FR 26650].

[156] *See* comment letter from Investment Company Institute (ICI).

[157] *See* Section III.A.3.d of the 2004 ABS Adopting Release. We noted that modifying the reporting obligation would raise broad issues about the treatment of other non-ABS issuers that do not have public common equity. We believe our ABS shelf eligibility proposal is sufficiently distinguishable from the treatment of non-ABS issuers.

[158] *See* proposed Item 512(a)(7)(ii) of Regulation S–K.

[159] We also are proposing to add a checkbox to the cover page of Forms 10–K, 10–D, and 8–K where the issuer would be required to indicate whether the report is being filed pursuant to the proposed undertaking.

[160] *See* the Committee on Capital Markets Regulation Financial Crisis Report, at 151–152 (noting that loan-level data is not useful if issuers can opt out of periodic reporting and recommending that the Commission consider whether Section 15(d) of the Exchange Act should apply to the typical RMBS issuance); Statement of Paul Schott Stevens President and CEO, ICI, for SEC Roundtable on Oversight of Credit Rating Agencies, April 15, 2009, available at *http://www.sec.gov/comments/4-579/4579-15.pdf* (recommending that the Commission require disclosure under Regulation AB be required to be made on an ongoing basis in spite of Section 15(d)).

[161] 17 CFR 229.1106.

proposed criteria? Should shelf eligibility be conditioned on a limitation of the capital structure of ABS offerings? For instance, should shelf offerings not be allowed to include leveraged tranches or should we limit the number of tranches? If so, how many (e.g., five, six, or seven)? Should we put restrictions on the size of each tranche? If so, how should we do that? Should we limit ABS shelf eligibility to offerings backed by assets that are seasoned for some period of time? If so, how much time for each asset class (e.g., six months, one year, or two years)? Are there certain standardized structures that we should use as a requirement for shelf offering?

(e) Other Proposed Form SF–3 Requirements

We are proposing other amendments to Rule 401 and the instructions in proposed Form SF–3 relating to form eligibility. Currently, to be eligible to use Form S–3, the existing form for ABS shelf registration, an issuer must meet the form's registrant requirements, which generally pertain for ABS issuers to reporting history under the Exchange Act of the depositor and affiliates of the depositor with respect to the same asset class, and at least one of the form's transaction requirements. One of the current ABS transaction requirements for use of Form S–3 is that the securities are investment grade securities, and above we have described our proposals for four new transaction requirements for use of Form SF–3 that would replace the investment grade ratings requirement (*i.e.,* risk retention, third party opinion review of repurchase demands, certification, and the undertaking to file Exchange Act reports). We are proposing to add new registrant requirements that pertain to compliance with the four proposed transaction requirements. These registrant requirements would be new shelf eligibility conditions to registration on proposed Form SF–3, and would also serve as the new eligibility conditions to be evaluated prior to conducting an offering off an effective Form SF–3 shelf registration statement.

(i) Registrant Requirements To Be Met for Filing a Form SF–3

In order to be eligible to file a registration statement on proposed Form SF–3, we are proposing that the registrant meet the following new requirements. First, we are proposing to require that to the extent the sponsor or an affiliate of the sponsor of the ABS transaction being registered was required to retain risk with respect to a previous ABS offering involving the same asset class, then, at the time of filing the registration statement, such sponsor or affiliate must be holding the required risk.

Second, we are proposing that to the extent the depositor or an issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement required to comply with the other transaction requirements of Form SF–3 ("twelve-month look-back period"), with respect to a previous offering of securities involving the same asset class, the following requirements would apply:

- Such depositor and each such issuing entity must have timely filed all the transaction agreements that contained the required provision relating to the third party opinion review of repurchase demands; [162]
- Such depositor and each such issuing entity must have timely filed all the required certifications of the depositor's chief executive officer; and
- Such depositor and each such issuing entity must have filed all the reports that they had undertaken to file during the previous twelve months (or such shorter period during which the depositor or issuing entity had undertaken to file reports) as would be required under the Section 15(d) of Exchange Act if they were subject to the reporting requirements of that section.

Third, as proposed, there must be disclosure in the registration statement on Form SF–3 stating that these proposed registrant requirements have been complied with.

These proposed new registrant requirements are, in many respects, consistent with the existing Form S–3 registrant requirement relating to Exchange Act reporting.[163] As with the existing Form S–3 Exchange Act reporting registrant requirement, which we are retaining for proposed Form SF–3, the proposed new registrant requirements would require specified compliance with respect to previous offerings of the depositor or its affiliates. The proposed twelve-month look-back period (except for the requirement relating to risk retention) is also consistent with the existing Form S–3 Exchange Act reporting registrant requirement. The proposed new registrant requirement relating to risk retention requires an issuer to measure its risk retention as of the date of filing the registration statement, which we believe is a reasonable requirement. As described in more detail below, we are not proposing to require the sponsor or an affiliate of the sponsor to ensure that all risk was retained at all times during the previous twelve calendar months, for purposes of shelf eligibility, out of a concern that it may be overly burdensome.

(ii) Evaluation of Form SF–3 Eligibility in Lieu of Section 10(a)(3) Update

Form S–3 eligibility under the current rules is determined at the time of filing the registration statement and at the time of updating that registration statement under Securities Act Section 10(a)(3) [164] by filing audited financial statements. Because ABS registration statements do not contain financial statements of the issuer, a periodic determination of whether the issuer can continue to use the shelf would be specified by rule.[165] Such an evaluation would also provide a means for the Commission and its staff to better oversee compliance with the proposed new Form SF–3 eligibility conditions that would replace the existing investment grade ratings requirement. Therefore, in lieu of Section 10(a)(3) updating, we are proposing to revise Rule 401 to require, as a condition to conducting an offering off an effective shelf registration statement, an annual evaluation of whether the Exchange Act reporting registrant requirements have been satisfied. Under the proposal, an ABS issuer wishing to conduct a takedown off an effective shelf registration statement must evaluate whether affiliated issuers that were required to report under Sections 13(a) or 15(d) of the Exchange Act during the previous twelve months, have filed such reports on a timely basis, as of ninety

[162] Under our proposal discussed in Section III.F below, we are proposing to revise Item 1100(f) to require that exhibits be filed no later than the date of filing the final prospectus.

[163] Under existing Form S–3, prior to filing a registration statement, to the extent the depositor or any issuing entity previously established by the depositor or an affiliate of the depositor are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the Form S–3 required to file Exchange Act reports, with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed during the twelve months (or shorter period that the entity was required to have filed such materials). Also, such material, other than certain specified reports on Form 8–K, must have been filed in a timely manner. *See* General Instruction I.A.4 to Form S–3.

[164] 15 U.S.C. 77j(a)(3).

[165] *See* Securities Act Rule 401(b) [17 CFR 230.401(b)].

days after the end of the depositor's fiscal year end.[166]

(iii) Quarterly Evaluation of Eligibility To Use Effective Form SF–3 for Takedowns

We also are proposing to require a quarterly evaluation of whether the ABS issuer has satisfied the proposed new registrant requirements relating to risk retention, third party opinions, the depositor's chief executive officer certification, and the undertaking to file ongoing reports. Under our proposal, an ABS issuer wishing to conduct a takedown off an effective shelf registration statement must evaluate its compliance with the proposed new registrant requirements as of the last day of the most recent fiscal quarter.

(A) Risk Retention

Accordingly, if the interest that a sponsor was required under the proposed risk retention shelf eligibility condition to retain during the previous twelve months (or shorter period as applicable), with respect to a previous offering of securities off a Form SF–3 registration statement involving the same asset class, was sold off or hedged as of the last day of the most recent fiscal quarter, the related shelf registration statement could not be utilized for subsequent offerings until the fiscal quarter after the sponsor has re-acquired the risk that was required to be retained (*e.g.,* by removing the disqualifying hedge or open market purchases of the securities) and such risk was on the sponsor's books as of the end of the fiscal quarter. We have provided for quarterly testing because we are concerned that more frequent testing could be unnecessarily costly. By requiring an evaluation of risk retention at the end of the quarter, we are not suggesting that a sponsor could permissibly sell or hedge the required risk. Such activities would be inconsistent with the risk retention shelf eligibility condition, with the disclosure relating to a sponsor's interest in the transaction that we are proposing to require in the registration statement, and would be subject to our proposed periodic reporting disclosure requirements related to the sponsor's interest described in Section III.C.3. below. At the same time, we are concerned that there may be circumstances where a sponsor or its affiliates undertake transactions that inadvertently hedge a required risk retention interest, and discover this after a take-down off the shelf by an affiliated ABS issuer. We are not proposing that this would necessarily cause the new offering to be deemed not to have been registered on the appropriate form. However, we believe that it is important that our requirements take into consideration a practicable testing schedule that promotes compliance with the proposed shelf eligibility criteria without creating undue burdens or uncertainty for issuers, and we are proposing requirements that would require at least quarterly testing to achieve that goal. Similarly, with respect to our proposed registrant requirement relating to risk retention, we are proposing that an issuer evaluate whether the sponsor has retained required risk at the time of filing the registration statement.

(B) Transaction Agreements and Officer Certification

An ABS issuer must also evaluate whether, during the previous twelve months, the depositor or it affiliates had filed the transaction agreements required to contain the third party opinion provision and the depositor's chief executive officer certifications on a timely basis as of the end of the quarter. If they had not, then the depositor could not utilize the registration statement or file new registration statement on Form SF–3 until one year after the required filings were filed.

(C) Undertaking To File Exchange Act Reports

Finally, under this proposal, an issuer must evaluate whether Exchange Act reports, with respect to previous takedowns off an effective registration statement of the depositor or affiliate of the depositor, where the issuer had undertaken to file such reports during the prior twelve months had, in fact, been filed as of the last day of the most recent fiscal quarter. In this way, the reports required under Section 13(a) or 15(d) must continue to be timely for shelf eligibility but reports required pursuant to the undertaking must be current as of the end of the quarter. As such, the ABS issuer would need to confirm once a quarter that it continued to be eligible to use the effective registration statement for takedowns.

Request for Comment

- Should we add, as proposed, registrant requirements that would require, as a condition to form eligibility, affiliated issuers of the depositor that had offered securities of the same asset class that were registered on Form SF–3 to have complied with the risk retention, third party opinion, certification and ongoing reporting shelf eligibility conditions that replace the investment grade ratings requirement? Will these requirements lead to better compliance by ABS issuers with the new shelf eligibility conditions that we are proposing?
- Should we require disclosure, as proposed, in the registration statement that the registrant requirements have been complied with? Should we specify a location in the registration statement for such disclosure?
- In our proposed registrant requirements for Form SF–3, we are proposing to require that sponsors of affiliated issuers have retained the required risk at the time of filing the registration statement. Is that appropriate? Should we require continued monitoring of risk retention compliance instead? Should we provide the loss of shelf eligibility if the sponsor of a previously established affiliated issuer has not retained at any time during the previous twelve months all of the risk that it was required to retain during that time? Or would such a requirement be overly burdensome?
- Is it appropriate to require, as proposed, that the certifications and the transaction agreement containing the required third party opinion provision that are required to be filed pursuant to our proposed shelf eligibility conditions be filed on a timely basis? Why or why not?
- We are proposing to require an affiliated issuer that has undertaken to file Exchange Act reports in the last twelve months to have filed such reports as required pursuant to the Exchange Act rules. Is this an appropriate additional registrant requirement for proposed Form SF–3? Should we also specify that such reports must have been filed on a timely basis?
- Should we revise Rule 401, as proposed, to require that as a condition to continued use of an existing shelf registration statement for takedowns, an issuer conduct a periodic evaluation of form eligibility? Why or why not? If not, how should we address the concern that ABS issuers do not file amendments for purposes of Section 10(a)(3)?
- Should we require, as proposed, that an issuer test for sponsor's compliance with risk retention requirements as of the end of the fiscal quarter? Could there be situations where a sponsor or its affiliates undertake transactions that inadvertently hedge a required risk retention interest? Alternatively, because the testing for compliance would occur at predictable

[166] Under this proposal, the related registration statement could not be utilized for subsequent offerings for at least one year from the date the issuer that had failed to file Exchange Act reports then became current in its Exchange Act reports (and the other requirements had been met).

intervals, are there concerns that the quarterly test for risk retention compliance could allow a sponsor to hold less than the required risk in between testing intervals? Should our requirements provide for testing that is made at different intervals (*e.g.,* once a month, once a distribution period, twice a quarter, at minimum number of random intervals)?

• Should we require that the evaluation of whether Exchange Act reports of affiliated issuers have been filed on a timely basis be made as of the 90 days after the depositor's fiscal year, as proposed? Should the evaluation be made on a different timeframe, such as the last day of the most recent fiscal quarter, consistent with our other proposals here?

• Should we require, as proposed, that the evaluation of whether the registrant requirements relating to risk retention, third party opinions, certification, and the issuer's undertaking to file ongoing reports be made as the last day of the most recent fiscal quarter? Should that evaluation be made at different periods, such as monthly or annually?

4. Continuous Offerings

We also are proposing to amend Rule 415 to limit the registration of continuous offerings for ABS offerings to "all or none" offerings. While we have not encountered particular problems with respect to continuous ABS offerings to date (and we believe that ABS offerings are not typically continuous), we believe that our proposal would help ensure that ABS investors receive sufficient information relating to the pool assets, if an issuer registered an ABS offering to be conducted as a continuous offering. We believe that this would close a potential gap in our regulations for ABS offerings.

In an all or none offering, the transaction is only completed if all of the securities are sold. However, in a best-efforts or "mini-max" offering, a variable amount of securities may be sold. In those latter cases, because the size of the offering would be unknown, investors would not have the transaction-specific information and, in particular, would not know the specific assets to be included in the transaction. Thus, Item 1111, either in its existing form or as proposed to be amended, could not be complied with.[167] Under our proposal, the continuous offering must be commenced promptly and must be made on the condition that all of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by the seller by a specified date.[168]

Request for Comment

• Is our proposed amendment to Rule 415 relating to continuous offerings of ABS appropriate?

• Should we restrict the duration of a continuous offering of ABS? If so, how long should the offering be permitted to continue?

5. Mortgage Related Securities

As noted above, mortgage related securities, as that term is defined in Section 3(a)(41) of the Exchange Act, currently are eligible for shelf registration regardless of form eligibility. This was a provision that was added to Rule 415 contemporaneous with the enactment of SMMEA.[169] As a result, an offering of mortgage related securities that does not meet the requirements of Form S–3 can be registered on a delayed basis on Form S–1.[170]

We believe that mortgage related securities should meet all the requirements we are proposing for shelf eligibility in order to be eligible for registration on a delayed basis since these securities present the same complexities and concerns as other asset-backed securities. To achieve this goal and to better coordinate shelf registration for all types of asset-backed securities, we are proposing to amend Rule 415 to eliminate the provision for shelf eligibility for mortgage related securities regardless of the form that can be used for registration of the securities.[171] Under the proposal, offerings of mortgage related securities will only be eligible for shelf registration on a delayed basis if, like other asset-backed securities, they meet the criteria for eligibility for shelf registration that we are proposing today. Thus, as proposed, delayed shelf offerings of mortgage related securities must be registered on new proposed Form SF–3, and accordingly, must meet the eligibility requirements of Form SF–3.

Request for Comment

• We request comment on the proposed amendment for mortgage related securities. Should we instead treat mortgage related securities differently from other asset-backed securities by continuing to condition the ability to conduct a delayed offering of mortgage related securities on their credit ratings by an NRSRO?

• We are proposing to require that delayed offerings of mortgage related securities be registered on proposed Form SF–3, the same registration form for delayed offerings of other asset-backed securities. Is there any reason to permit delayed offerings of mortgage related securities on either proposed Form SF–1 or proposed Form SF–3?

C. Exchange Act Rule 15c2–8(b)

Except for securities issued under master trust structures, shelf-eligible ABS issuers generally are not reporting issuers at the time of issuance. Under Exchange Act Rule 15c2–8(b),[172] with respect to an issue of securities where the issuer has not been previously required to file reports pursuant to Sections 13(a) and 15(d) of the Exchange Act, unless the issuer has been exempted from the requirement to file reports thereunder pursuant to Section 12(h) of the Exchange Act, a broker or dealer is required to deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation ("48-hour preliminary prospectus delivery requirement"). The rule contains an exception to the 48-hour preliminary prospectus delivery requirement for offerings of asset-backed securities eligible for registration on Form S–3. An exception to the 48-hour preliminary prospectus delivery requirement was first provided in 1995 by staff no-action position.[173] This staff position was later codified in 2004.[174]

In light of recent economic events and to make this rule consistent with our other proposed revisions, we are proposing to eliminate this exception so that a broker or dealer would be

[167] The staff has advised us that they believe that neither best efforts offerings nor any continuous offerings have been utilized in the past for public offerings of asset-backed securities.

[168] All or none offerings are described in Exchange Act Rule 10b–9 [17 CFR 240.10b–9] in the same manner.

[169] *See* Section II.A. and fn. 61 above.

[170] *See* fn. 61 of 2004 ABS Adopting Release.

[171] As proposed, Rule 415(a)(1)(vii) would enumerate the provision that permits delayed offerings for all asset-backed securities that are eligible to register on the proposed new Form SF–3. This provision would include offerings of eligible mortgage related securities.

[172] 17 CFR 240.15c2–8(b).

[173] *See* fn. 163 of the 2004 ABS Adopting Release and accompanying text (discussing staff no-action letters providing relief to ABS issuers from Rule 15c2–8(b)).

[174] In the 2004 ABS Adopting Release, we noted some concerns that investors did not have sufficient time to consider ABS offering information. However, we determined to codify the staff position in light of other proposals that we were considering at the time that sought to address information disparity in the offering process.

required to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale for all offerings of asset-backed securities, including those involving master trusts. Because each pool of assets in an ABS offering is unique, we believe that an ABS offering is akin to an initial public offering, and therefore we believe the 48-hour preliminary prospectus delivery requirement in Rule 15c2–8(b) should apply. Even with subsequent offerings of a master trust, the offerings are more similar to an initial public offering given that the mix of assets changes and is different for each offering. Moreover, requiring that a broker or dealer provide an investor with a preliminary prospectus at least 48 hours before sending a confirmation of sale should be feasible and made easier to implement as a result of our proposal that a form of preliminary prospectus be filed with the Commission at least five business days in advance of the first sale in a shelf offering. We, therefore, are proposing to amend Rule 15c2–8(b) by repealing the exception for shelf-eligible asset-backed securities from the 48-hour preliminary prospectus delivery requirement.[175]

Under the proposed amendment, a broker or dealer would be required to comply with the 48-hour preliminary prospectus delivery requirement with respect to the sale of securities by each ABS issuer, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange Act.[176] In addition, the 48-hour preliminary prospectus delivery requirement would also apply to ABS issuers utilizing master trust structures that are exempt from the reporting requirements pursuant to Section 12(h) of the Exchange Act. In a master trust securitization, assets may be added to the pool in connection with future issuances of the securities backed by the pool.[177] Although ABS issuers utilizing master trust structures may be reporting under the Exchange Act at the time of a "follow-on" or subsequent offering of securities, additional assets are added to the entire pool backing the trust in connection with a subsequent offering of securities. Additional assets are added to the pool also in connection with a subsequent offering by an issuer utilizing a master trust structure that is exempt from reporting under Section 12(h) or the rules thereunder. Requiring a broker-dealer to deliver a preliminary prospectus at least 48 hours before sending a confirmation of sale of ABS involving master trust structures issued by a reporting ABS issuer could afford investors more time to consider information about the assets that is not provided in Exchange Act reports.[178]

We are also proposing a correcting amendment to Rule 15c2–8(j). Paragraph (j) states that the terms "preliminary prospectus" and "final prospectus" include terms that are defined in a Rule 434. In 1995, at the same time we adopted Rule 434, we added paragraph (j) to expand the use of the terms "preliminary prospectus" and "final prospectus" to reflect the terminology used in Rule 434.[179] Rule 434, however, was later repealed in 2005.[180] Accordingly, we are proposing to delete paragraph (j), which is no longer applicable.

Request for Comment

- Should we adopt a 48-hour preliminary prospectus delivery requirement for all ABS issuers, as proposed? Should we instead provide a different application of the 48-hour preliminary prospectus delivery requirement for ABS issuers? Should a broker or dealer be required to deliver a preliminary prospectus for an ABS offering at a different time from initial public offerings, such as 48 hours before the first sale in the offering (instead of 48 hours before confirmation)?
- Does our proposal to require filing of a preliminary prospectus pursuant to proposed Rule 424(h) at least five business days before the first sale in the offering make the proposed changes to Rule 15c2–8(b) unnecessary? Or is delivery of the preliminary prospectus, as contemplated by Rule 15c2–8(b), important? Would the proposed amendment to 15c2–8(b) provide a meaningful change in the information and time that investors are given to consider offering materials?[181]
- How should the prospectus delivery requirement apply to master trust structures? Is our proposal appropriate with respect to master trusts? Should we instead amend the rule to apply the 48-hour preliminary prospectus delivery requirement to master trusts only if the pool assets have changed by a specified level? If so, what should that level be (*e.g.,* a change in five, ten, or 20% of pool assets, a change in a specified percentage such as five, ten, or 20% of the dollar value of the pool assets as measured by the principal balance, a significant change in the pool assets)? Are there other ways of measuring change in pool assets? Should this be determined by asset class, and if so, which asset classes should be subject to what standards? For example, should a change in pool assets for purposes of Rule 15c2–8 be measured differently for credit card ABS than for dealer floorplan ABS?
- As proposed, there are no specific disclosure requirements applicable to the 48-hour preliminary prospectus. Do we need to specify further how much asset or other information should be contained in the 48-hour preliminary prospectus? Or is that unnecessary in light of proposed Rule 430D and the proposed Rule 424(h) filing requirements?

D. Including Information in the Form of Prospectus in the Registration Statement

1. Presentation of Disclosure in Prospectuses

As currently permitted, asset-backed offerings registered on a shelf basis typically present disclosure through the use of two primary documents: the "base" or "core" prospectus and the

[175] Because of the other changes we are proposing, we are also proposing to repeal Rule 190(b)(7). Rule 190(b)(7) provides that if securities in the underlying asset pool of asset-backed securities are being registered, and the offering of the asset-backed securities and the underlying securities is not made on a firm commitment basis, the issuing entity must distribute a preliminary prospectus for both the underlying securities and the expected amount of the issuer's securities that is to be included in the asset pool to any person who is expected to receive a confirmation of sale of the asset-backed securities at least 48 hours prior to sending such confirmation. Rule 190(b)(7) effectively overrules the exclusion in Rule 15c2–8 for ABS issuers from the 48-hour preliminary prospectus delivery requirement for particular types of ABS offerings. Because we are proposing to repeal the Rule 15c2–8 exclusion for ABS issuers, and because our proposed disclosure requirements regarding the underlying securities for resecuritizations would require significantly more information than what is required in Rule 190(b)(7) to be provided in the preliminary prospectus, we are proposing to delete Rule 190(b)(7).

[176] *See* definition of issuer in relation to asset-backed securities in Exchange Act Rule 3b–19.

[177] The typical master trust securitization is backed by assets arising out of revolving accounts such as credit card receivables or dealer floorplan financings.

[178] We note that many such issuers currently often provide preliminary prospectuses to investors for each offering. Therefore, we do not believe our proposal would be overly burdensome on such issuers.

[179] *See* Section II.B.4.a of *Prospectus Delivery; Securities Transactions Settlement,* Release No. 33–7168 (May 11, 1995) [60 FR 26604].

[180] Rule 434 was repealed in the Offering Reform Release.

[181] The 48-hour preliminary prospectus delivery requirement is triggered by when a broker-dealer sends a confirmation of sale. Under Exchange Act Rule 10b–10 [17 CFR 240.10b–10], the Commission's confirmation rule, broker-dealers must send confirmations to their customers at or before completion of a securities transaction. Given the industry practice of a lengthy time to complete an ABS transaction, a customer may not receive a preliminary prospectus until well after he or she has made an investment decision. *See also* Exchange Act Rule 15c1–1 [17 CFR 240.15c1–1] (defining "completion of the transaction").

prospectus supplement.[182] The base prospectus filed prior to effectiveness of the registration statement outlines the parameters of the various types of ABS offerings that may be conducted in the future, including asset types that may be securitized, the types of security structures that may be used and possible credit enhancements or other forms of support. The registration statement at the time of effectiveness also contains one or more forms of prospectus supplement, which outline the format of transaction-specific information that will be disclosed at the time of each takedown.[183] At the time of a takedown, a final prospectus supplement is used which describes the specific terms of the securities being offered.[184] The base prospectus and the final prospectus supplement together form the final prospectus which is filed with the Commission pursuant to Securities Act Rule 424(b).[185]

This practice has also been utilized by non-ABS issuers. However, for typical corporate issuers, their base prospectus is substantially shorter than in an ABS offering as the bulk of the information is incorporated by reference into the prospectus from the issuer's Exchange Act reports.

In the 2004 ABS Adopting Release, we explained that when presenting disclosure in base prospectuses and prospectus supplements, the base prospectus must describe the types of offerings contemplated by the registration statement.[186] We also noted that a takedown off of a shelf that involves assets, structural features, credit enhancement or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (*e.g.,* to include additional assets) or a post-effective amendment (*e.g.,* to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424. However, we admonished registrants to exercise discretion and describe only those material asset types and features reasonably contemplated to be included in an actual takedown in order to make the information easily accessible to investors.[187]

Today, we also remind issuers of the importance of providing disclosure in compliance with our plain English rules. Under Securities Act Rule 421,[188] information in a prospectus must be presented in a clear, concise and understandable manner. The note to Rule 421(b) states that issuers should avoid copying complex information directly from legal documents without any clear and concise explanation of the provisions. The rule also cautions against using boilerplate disclosure and repeating disclosure in different sections of the document because it increases the size of the document and it does not enhance the quality of information.[189]

Notwithstanding the discussion in the 2004 ABS Adopting Release and the provisions of Rule 421, we are concerned that the base and supplement format has resulted in unwieldy documents with excessive and inapplicable disclosure that is not useful to investors. Many ABS prospectuses in this format often include boilerplate disclosure and complex information that appears to be imported directly from forms of transaction agreements. Some issuers file a base prospectus that contemplates multiple asset types, security structures and possible types of enhancement and support that are never actually utilized in a takedown. Moreover, the length of a disclosure document for an ABS offering, as a result of the base and prospectus supplement format, is often overwhelming and is burdensome for investors to navigate.

Another problem that has arisen under current practices is that in some instances, issuers have filed with the Commission at the time of takedown only the prospectus supplement and not the base prospectus that was included in the registration statement. Since the base and the prospectus supplement together form the final prospectus, when an ABS issuer excludes the base prospectus from the EDGAR filing at the time of takedown, an investor needs to locate the base prospectus filed with the initial effective registration statement on Form S–3 on EDGAR. Given that a shelf registration statement is available for three years,[190] it can be unclear what information from the base prospectus is applicable to the current offering or is superseded by the supplement.

The current format has the unintended effect of encouraging a drafting approach that builds in the largest possible flexibility for as many differing transactions as possible, although with the negative effect that an investor bears the burden of determining which disclosures are relevant to a particular transaction. The current rule benefits issuers but may not be as useful for investors, when the registration statement is primarily for the benefit of investors. We believe we should facilitate investor understanding and access to prospectuses for ABS and eliminate unnecessary disclosures given to investors. Investors must be able to readily access and understand the information for a specific offering. Consequently, we are proposing to eliminate the practice of providing a base prospectus and a prospectus supplement for ABS issuers. To accomplish this, we are proposing to add a provision in new Rule 430D and an instruction to proposed Form SF–3 that would require ABS issuers to file a form of prospectus at the time of effectiveness of the proposed Form SF–3 and to file a single prospectus for each takedown, which would require that all of the information required by Regulation AB be included in the prospectus.[191] We believe our proposal will help issuers comply with our plain English requirements, help reduce the size of the offering documents, and eliminate the need to review inapplicable disclosure.

Other than the proposed limitation of one depositor and asset class per registration statement discussed below,

[182] The Form S–3 requirements adopted in 2004 incorporated the existing practice of using a base and supplement format. In Section III.A.3.b. of the 2004 ABS Adopting Release, we noted that we did not intend to change existing practices of asset-backed issuers.

[183] Rule 430B describes the type of information that primary shelf eligible issuers and automatic shelf issuers may omit from a base prospectus in a Rule 415 offering and include instead in a prospectus supplement, Exchange Act report incorporated by reference, or a post-effective amendment. Under Rule 430B a base prospectus in a shelf registration statement must comply with the applicable form requirements, but can omit information that is unknown or not reasonably available to the registrant pursuant to Rule 409. *See* Section V.B.1.b.i.(A) of the Offering Reform Release.

[184] We note that currently stand alone trust issuers do not usually provide preliminary prospectuses to investors.

[185] *See* Section III.A.3.b of the 2004 ABS Adopting Release and Section V.B.1.b.i.(A) of the Offering Reform Release.

[186] *See* Securities Act Rule 409 [17 CFR 230.409] and Section III.A.3.b. of the 2004 ABS Adopting Release.

[187] *See* Section III.A.3.b of the 2004 ABS Adopting Release.

[188] 17 CFR 230.421. *See also A Plain English Handbook: How to Create Clear SEC Disclosure Documents,* available at *http://www.sec.gov/pdf/handbook.pdf.*

[189] *See* 17 CFR 230.421(b).

[190] *See* Securities Act Rule 415(a)(5).

[191] Disclosure may still be incorporated by reference as allowed by proposed Rule 430D and the applicable Form requirements. Proposed Rule 430D(c) would provide that information omitted from a form of prospectus that is part of an effective registration statement in reliance on Rule 430D(a) that is subsequently included in the prospectus that is part of a registration statement must contain all of the information that is required to be included in the prospectus pursuant to the requirements of the registration statement with respect to the offering. Under this proposed requirement, an ABS issuer would not be permitted to include information on the offering in a prospectus base and supplement format. We discuss this proposal in more depth in Section II.B.1.b.

we believe requiring only one form of prospectus with the registration statement would not limit the flexibility of the issuer to vary its structural features from takedown to takedown. As is the case today, assets, structuring and other features may be presented in brackets in the form of prospectus filed with the registration statement. Under the proposal, issuers could include the same bracketed information in the form of prospectus filed with the registration statement. At the time of the offering, only the disclosure applicable to the transaction at hand would be included in the prospectus provided to investors and filed with the Commission.

Currently, some sponsors create a separate depositor for each of its various loan programs, and each depositor files its own shelf registration statement. Other issuers have included multiple depositors,[192] multiple base prospectuses and multiple prospectus supplements all in one registration statement.[193] Under our proposal, each depositor would be required to file a separate registration statement for each form of prospectus. Each registration statement would cover offerings by one depositor securitizing only one asset class.[194] Although this would change current practice for asset-backed issuers, we believe such a change would make disclosure for investors much more accessible and useful.

Request for Comment

- Is the proposed change to presentation of disclosure in the prospectus appropriate? Would investors benefit from the proposed change? Would it be unduly burdensome for issuers to prepare the disclosure in a single document? If so, how can we better mandate clear and concise documents so that investors are able and encouraged to analyze the investment?
- Is our proposal to require a depositor to file a separate registration statement for each form of prospectus appropriate?
- Are there any particular asset classes that should retain the base and form of prospectus supplement format? If so, why?
- Should issuers be able to file more than one form of prospectus with a registration statement? If so, why? If issuers were permitted to do so, what other steps could be taken to help market participants understand the transaction?
- Are there other changes we should make to the format and form of the prospectus to assist investors in analyzing the potential investment?

2. Adding New Structural Features or Credit Enhancements

We are also proposing to restrict the ability of ABS issuers to file a prospectus under Rule 424(b) for the purpose of adding certain types of information to the form of prospectus. Under the existing Rule 430B, ABS issuers and other issuers are permitted to provide the information omitted from the prospectus that is part of a registration statement at the time of the offering as a prospectus supplement, a post-effective amendment, or where permitted as described below, through its Exchange Act filings that are incorporated by reference into the registration statement and prospectus that is part of the registration statement and identified in a prospectus supplement.[195] In the 2004 ABS Adopting Release, we stated our longstanding position that the type or category of asset to be securitized must be fully described in the registration statement at the time of effectiveness.[196] We further explained the structural features contemplated also should be disclosed, as well as identification of the types or categories of securities that may be offered, such as interest-weighted or principal-weighted classes (including IO or PO securities), planned amortization or companion classes or residual or subordinated interests.[197] We stated that a takedown off of a shelf that involves assets, structural features, credit enhancements or other features that were not described as contemplated in the base prospectus will usually require either a new registration statement (*e.g.,* to include additional assets) or a post-effective amendment (*e.g.,* to include new structural features or credit enhancement) rather than simply describing them in the final prospectus filed with the Commission pursuant to Securities Act Rule 424.[198] Although, with Offering Reform, we adopted Rule 430B,[199] which provides all issuers on Form S–3 with the alternative to include information previously omitted in a prospectus filed pursuant to 424(b) or by incorporating periodic and current Exchange Act reports and the staff has continued to apply our position articulated in the 2004 ABS Adopting Release. We confirm that position by proposing to codify our statement regarding when a post-effective amendment would be required in Rule 430D.[200]

We are proposing to require that when the issuer desires to add information that relates to new structural features or credit enhancement, the issuer must file that information by post-effective amendment. As a result of this proposal, the staff would have the opportunity to review new structural features or credit enhancements that would be contemplated for future offerings. With respect to new assets, we believe that if the issuer intends to offer securities that are backed by assets that are not contemplated in the form of prospectus that is filed as part of the registration statement, a new registration statement should be filed.[201]

Request for Comment

- Is our proposal to require issuers to file a post-effective amendment to reflect new structural features or credit enhancements and provide a related undertaking appropriate?

E. Pay-as-You-Go Registration Fees

In 2005, we first adopted pay-as-you-go rules[202] to allow well-known seasoned issuers using automatic shelf registration statements to pay filing fees at the time of a securities offering.[203] To

[192] With respect to registration statements with multiple depositors, each depositor is an issuer of each takedown of securities off of a shelf. *See* Securities Act Rule 191 [17 CFR 230.191].

[193] Also, the current instructions to Form S–3 state that a registration statement may not merely identify several alternative types of assets that may be securitized. Under current requirements, a separate base prospectus and form of prospectus supplement must be presented for each asset class that may be securitized in a discrete pool in a takedown under that registration statement. *See* General Instruction V.A.2 of Form S–3 and Section III.A.3.b. of the 2004 ABS Adopting Release.

[194] For instance, resecuritization transactions of mortgage-backed securities would be considered a separate asset class from mortgage-backed securities and, thus, require a separate registration statement, even if the depositor would be the same. As we currently require for offerings registered on Form S–3, a separate registration statement would be required for takedowns involving pools of foreign assets where the assets originate in separate countries or the property securing the pool assets is located in separate countries. In cases where an underlying security such as a special unit of beneficial interest (SUBI) or collateral certificate is also registered, the depositor of the underlying SUBI or collateral certificate would also be included in the same registration statement. Collateral certificates and SUBIs are discussed further in Section VII.A. below.

[195] *See* Securities Act Rule 430B(d) and Offering Reform Release Section V.B.1.b.i.(B).

[196] *See* Section III.A.3.b. of the 2004 ABS Adopting Release.

[197] *See id.*

[198] *See id.*

[199] *See* Securities Act Rule 430B(d) and Section V.B.1.b.i.(B) of the Offering Reform Release.

[200] *See* proposed Securities Act Rule 430D(d)(2).

[201] If the asset pool includes securities, registration would be required under Securities Act Rule 190.

[202] *See* Securities Act Rules 456(b) [17 CFR 230.456(b)] and 457(r) [17 CFR 230.457(r)].

[203] *See* Section V.B.2.b.(D) of the Offering Reform Release. Under the current pay-as-you-go procedure for WKSIs, an issuer can pay any filing fee, in whole

Continued

alleviate some of the burden of managing multiple registration statements among ABS issuers, we are proposing to allow, but not require, asset-backed issuers eligible to use Form SF–3 to pay filing fees as securities are offered off of a shelf registration statement. If this approach, commonly known as "pay-as-you-go," is adopted for ABS issuers, no filing fees would need to be paid at the time of filing a registration statement on Form SF–3. A dollar amount or a specific number of securities would not be required to be included in the calculation of the registration fee table in the registration statement, unless a fee based on an amount of securities is paid at the time of filing.[204] However, under our proposal the fee table on the cover of the registration statement must list the securities or class of securities registered and must indicate if the filing fee will be paid on a pay-as-you-go basis.[205]

Under our proposal, the triggering event for a fee payment would be the filing of a preliminary prospectus under proposed Rule 424(h).[206] At the time of filing a Rule 424(h) prospectus,[207] the asset-backed issuer would include a calculation of registration fee table on the cover page of the prospectus and would be required to pay the appropriate fee calculated in accordance with Securities Act Rule 457.[208]

Request for Comment

- Is our proposal for a pay-as-you go fee alternative for ABS issuers appropriate? Should ABS issuers be able to register offerings of an unspecified amount of securities on Form SF–3?
- Would this help with the management of multiple shelves for asset-backed issuers? Are there other steps we could take to help sponsors and depositors manage shelves for ABS?
- Should we revise Rule 457(p), as proposed, to clarify that if an ABS offering is not completed after the fee is paid, the fee could be applied to future registration statements by the same depositor or affiliates of the depositor across asset classes?

F. Signature Pages

We also are proposing to revise the signature pages for registration statements of asset-backed issuers. Securities Act Section 6 [209] requires that the registration statement be signed by the issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions. In 2004, we clarified that the depositor is the issuer for purposes of ABS.[210] We codified in the general instructions to Forms S–1 and S–3 that the registration statement must be signed by the depositor, the depositor's principal executive officer or officers, principal financial officer and controller or principal accounting officer, and by at least a majority of the depositor's board of directors or persons performing similar functions.[211]

Asset-backed issuers are not required to file financial statements of the issuer under our rules or pursuant to their governing documents, and these issuers do not employ a principal accounting officer or controller. Thus, because such signatures appear to serve no purpose, we are proposing to exempt asset-backed issuers from the requirement that the depositor's principal accounting officer or controller sign the registration statement.

The Form 10–K report for ABS issuers must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing. In addition, the certifications for ABS issuers that are required under Section 302 of the Sarbanes-Oxley Act [212] must be signed either on behalf of the depositor by the senior officer in charge of securitization of the depositor if the depositor is signing the Form 10–K report, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer if the servicer is signing the Form 10–K report. We are now proposing to require that the senior officer in charge of securitization of the depositor sign the registration statement (either on Form SF–1 or Form SF–3) for ABS issuers. We believe that requiring such individual to sign the registration statement is more meaningful in the context of ABS offerings because it is more consistent with our other signature requirements for ABS issuers.

Request for Comment

- Is our proposed amendment to the registration statement signature requirements appropriate? Is there any reason we should not exempt, as we are proposing to do, ABS issuers from the requirement that the depositor's principal accounting officer or comptroller sign the registration statement?
- Is our proposal to require the senior officer in charge of securitization of the depositor to sign the registration statement for ABS issuers appropriate?

III. Disclosure Requirements

In addition to reformatting how prospectuses are presented in ABS

or in part, in advance of takedown or at the time of takedown providing flexibility in the timing of the fee payment. Issuers using pay-as-you-go can still deposit monies in an account for payment of filing fees when due. The fee rules applicable to the use of such account, also referred to as the "lockbox account," apply. The amount of the fee is calculated based on the fee schedule in effect when the money is withdrawn from the lockbox account. This flexibility had been provided so issuers may determine the fee payment approach most appropriate for them. *See* fn. 529 of the Offering Reform Release.

[204] *See* proposed Securities Act Rule 457(s).

[205] In the case of ABS, the fee table on the registration statement would typically list the offering of certificates and notes as separate classes of securities. Each class (or tranche) of those certificates and notes offered would not need to be separately listed on the fee table. However, if the ABS is a resecuritization, where registration of the underlying securities would be required under Rule 190 and the underlying security was not listed on the fee table of the Form SF–3 registration statement, the offering would require a new registration statement. Likewise, if a servicer or trustee invests cash collections in other instruments which may be securities under the Securities Act, such as guarantees or debt instruments of an affiliate, under Rule 190 those underlying securities would also need to be registered concurrently with the asset-backed offering. If those underlying securities were not listed on the fee table of the registration statement, a new registration statement would be required.

[206] *See* proposed Securities Act Rule 456(c). Unlike the pay-as-you-go rules for WKSIs, we do not believe that a cure period is necessary for ABS issuers because we are proposing to require ABS issuers to pay the required fee at the time the preliminary prospectus is filed under Rule 424(h). The timing of the fee payment for ABS would not give rise to the same effective date and registration concerns that arise with WKSIs. Section V.B.2.b.(D) of the Offering Reform Release.

[207] If an issuer is filing a Rule 424(h) filing solely in order to update the fee table and pay additional fees, the 424(h) filing would not trigger a new five business day waiting period.

[208] The amount of the filing fee is calculated based on the fee schedule in effect at the time of payment (upon filing in advance, or at the time of an offering) in accordance with the provisions of Rule 457. Thus the fee amount may be different depending on the time of payment. Also, as provided in Rule 457(p), if all or a portion of the securities offered under a registration statement remain unsold after the offering's completion or termination, or withdrawal of the registration statement, the aggregate total dollar amount of the filing fee associated with those unsold securities may be offset against the total filing fee due for a subsequent registration statement. Currently, if an ABS offering is not completed after the fee is paid, the fee could be applied to future registration statements by the same depositor or affiliates of the depositor.

[209] 15 U.S.C. 77f(a).

[210] Securities Act Rule 191 and Exchange Act Rule 3b-19 state that the depositor for the asset-backed securities acting solely in its capacity as depositor to the issuing entity is the "issuer" for purposes of the asset-backed securities of that issuing entity. These rules also provide that the person acting in the capacity as such depositor is a different "issuer" from that same person acting as a depositor for another issuing entity or for purposes of that person's own securities.

[211] *See* General Instruction VI.C of Form S–1 and General Instruction V.B. of Form S–3.

[212] 15 U.S.C. 7241.

offerings, we are proposing several changes to the disclosure requirements in Regulation AB for asset-backed securities. Three of our proposals involve significant changes from our current requirements. First, subject to certain exceptions, we are proposing to require asset-level information regarding each asset in the pool backing the securities. Second, we are proposing that issuers of ABS backed by credit card pools provide standardized grouped account data regarding the underlying asset pool. Third, we are proposing to require that most issuers provide the flow of funds, or waterfall, in a waterfall computer program. In addition, we are proposing changes that refine other disclosure requirements, including those relating to pool-level disclosure, the prospectus summary, transaction parties, and static pool information.

A. Pool Assets

We are proposing to increase the required disclosure regarding the assets underlying the ABS. We are proposing that in most ABS offerings asset-level data be required in the prospectus at the time of offering and in Exchange Act reports. For credit card ABS issuers, we are proposing that issuers provide grouped account data. In order to facilitate investors' use of asset data files, we are proposing that the data be filed on EDGAR in Extensible Mark-Up Language (XML). We also are proposing revisions to our pool-level disclosure requirements designed to enhance the information available to analyze the pool.

While Regulation AB does not restrict the type or quality of assets that may be included in the asset pool, our rules under the Securities Act are designed to assure that a prospectus contains disclosure regarding the assets that facilitates informed investment decisions.[213] We believe access to robust information concerning the pool assets is important to investors' ability to make informed investment decisions about asset-backed securities.[214] We also believe disclosure about the pool should be as multi-faceted as necessary to provide a full picture of the composition and characteristics of the pool assets. In addition, it is critical that the pool asset information be presented in a comprehensible and clear fashion.[215]

1. Asset-Level Information in Prospectus

To augment our current principles-based pool-level disclosure requirements, we are proposing a new requirement to disclose asset-level information. Investors, market participants, policy makers and others have increasingly noted that asset-level information is essential to evaluating an asset-backed security.[216] Some have said that there is a need and investor appetite for increased asset-level disclosures.[217] We have heard that understanding a borrower's ability to repay may be more important than the features of the underlying loan, or even the collateral, on an asset-level basis.[218] Others have stated that having access only to pool data (and not asset-level data) has made it difficult to discern whether the riskiest loans were to the most creditworthy borrowers or to the least creditworthy borrowers in the asset pool.[219]

The public availability of asset-level information has been limited. In the past, some transaction agreements for securitizations required issuers to provide investors with asset-level information, or information on each asset in the pool backing the securities.[220] Such loan schedules provided to an investor are sometimes filed as part of the pooling and servicing agreement or as a free writing prospectus. We believe that all investors and market participants should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction.[221]

For most investors, the usefulness of asset-level data is generally limited unless the individual data points are standardized. Standardizing the information facilitates the ability to compare and analyze the underlying asset-level data of a particular asset pool as well as compare them with other pools.[222] Standardized and easily accessible data points also may facilitate stronger independent evaluations of ABS by market participants.

Prior to today, the Commission had not proposed to require asset-level data or proposed standards for such information. We are aware that some standards have already been developed for registered and unregistered offerings of commercial mortgage-backed securities and residential mortgage-backed securities.[223] The CRE Finance Council (formerly Commercial Mortgage Securities Association)'s [224] Investor Reporting Package includes data fields on loan, property and bond-level information for commercial mortgage-backed securities at issuance and while the securities are outstanding.[225] The American Securitization Forum (ASF) [226] recently published disclosure

[213] Item 1111 of Regulation AB contains our disclosure requirements regarding the pool assets. Item 1111 requires disclosure of the material aspects of the composition of the asset pool, sources of pool cash flow, changes to the asset pool, and rights and claims regarding the pool assets. *See* Section III.B.5. of the 2004 ABS Adopting Release.

[214] *See also* Section III.B.5 of the 2004 ABS Adopting Release.

[215] *See id.*

[216] *See, e.g.,* "Restoring Confidence in the Securitization Markets," *Global Joint Initiative Report,* Dec. 3, 2008, at 11.

[217] *See* Committee on Capital Markets Regulation Financial Crisis Report, at 147 (noting that a survey of data fields provided to investors did not include 21 data fields considered essential by all investors surveyed). *See also* Joshua Rosner, *Securitization: Taming the Wild West,* Roosevelt Institute Project on Global Finance, *Make Markets Be Markets* (Mar. 2010) at 75 (noting investors need for timely loan-level performance data in order to accurately price securities).

[218] *See* Committee on Capital Markets Regulation Financial Crisis Report, at 151 (recommending that standard, granular, loan-level data be provided sufficient to allow investors to complete their own credit analysis). *See also* Rosner, at 77 (noting that the lack of clear definitions interferes with investors' ability to compare performance of various deals, issuers, and underlying collateral).

[219] Testimony of Patricia A. McCoy, Hearing on "Securitization of Assets: Problems and Solutions" before the U.S. Senate Banking Housing and Urban Affairs Subcommittee on Securities, Insurance and Investment, Oct. 7, 2009.

[220] This usually includes information such as the principal balance at the time of origination, the date of origination, the original interest rate, the type of loan (*e.g.,* fixed, ARM, hybrid), the borrower's debt to income ratio, the documentation level for origination of the loan, and the loan-to-value ratio.

[221] Others have noted the importance of loan-level data to investors. *See* U.S. Department of Treasury, *A New Foundation: Rebuilding Financial Supervision and Regulation,* June 17, 2009; (noting in particular, that issuers of ABS should be required to disclose loan-level data); Federal Deposit Insurance Corporation, *Supervisory Insights: Enhancing Transparency in the Structured Finance Market,* available at *http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum08/article01_transparency.html* (stating that a lack of complete and public dissemination of a securitization's loan-level data reduces transparency and hampers the investor's ability to fully assess risk and assign value).

[222] *See* Statement of Former Federal Reserve Governor Randall S. Kroszner at the Federal Reserve System Conference on Housing and Mortgage Markets, Washington, DC, Dec. 4, 2008 (stating that a necessary condition for the potential of private-label MBS to be realized going forward is for comprehensive and standardized loan-level data covering the entire pool of loans backing MBS be made available and easily accessible so that the underlying credit quality can be rigorously analyzed by market participants).

[223] The collection of standardized disclosure given to investors is generally called a reporting package.

[224] The CRE Finance Council (formerly Commercial Mortgage Securities Association) is a trade organization for the commercial real estate finance industry.

[225] Materials related to the CRE Finance Council Investor Reporting Package are available at: *http://www.crefc.org/.*

[226] ASF is a securitization industry group that represents issuers, investors, financial intermediaries, rating agencies, legal and accounting firms, trustees, servicers, guarantors, and other market participants.

and reporting packages for residential mortgage-backed securities that included standardized definitions for loan or asset-level information.[227] The package is part of the group's Project on Residential Securitization Transparency and Reporting ("Project RESTART"). The ASF has proposed implementation dates involving new issuance loans under the Disclosure Package of February 1, 2010.[228] Other organizations, such as Mortgage Electronic Registration Systems, Inc. (MERS),[229] have developed reporting packages to capture and report data at different times during the life of the underlying residential or commercial loan. Sellers of mortgage loans to Fannie Mae and Freddie Mac [230] are required to deliver loan-level data in a standardized electronic form.[231] Other federal agencies, such as the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) also collect certain loan-level data on mortgages. The OCC and the OTS gather mortgage performance data from national banks and thrifts.[232] We are unaware of any publicly available data standards for other asset classes and currently there is no mandatory requirement that issuers follow any of these standards for reporting to investors in asset-backed securities.

Because we believe that issuers should provide transparent and comparable data, we are proposing to require asset-level information in a standardized format to be included in the prospectus and periodic reports and filed on EDGAR. Our proposal specifies and defines each item that must be disclosed for each asset in the pool. In our discussion below, we refer to each individual item requirement as an asset-level data point. Some of the asset-level data points that we are proposing are indicator fields. Indicator fields will require an answer of "yes" or "no," and are designed to facilitate investor review of the data.[233] We are also proposing an instruction to Schedule L that will contain definitions for some of the terms that we use throughout the schedule. Because we believe that asset-level data should be provided to investors and all market participants in a form that facilitates data analysis, we are also proposing to require that asset-level data be filed on EDGAR in XML format. These proposals would be in addition to the disclosure currently required about the composition and characteristics of the pool of assets taken as a whole. We believe the pool-level disclosure currently required by Regulation AB is still important to investment decisions and can facilitate an investor's understanding of the overall investment opportunity.

Request for Comment

- Is our proposal to require asset-level disclosure with data points identified in our rules appropriate?
- Is a different approach to asset-level disclosure preferable, such as requiring it generally, but relying on industry to set standards or requirements? If so, how would data be disclosed for all the asset classes for which no industry standard exists or for which multiple standards may exist? To the extent multiple standards exist, how would investors be able to compare pools? Please be detailed in your response.
- We note that there are several different standards under which asset-level data is already required. Would our requirements impose undue burdens on ABS issuers?
- Should we instead amend our current requirements regarding pool-level disclosure by requiring issuers to present certain pool-level tables in a standardized manner? For instance, should we specify how statistical data should be presented by defining the groups or incremental ranges that must be presented? What would those appropriate groups or incremental ranges be for an individual table? For instance, what would be the appropriate range for obligor income and why? Please be specific in your response.
- Are the definitions of terms in the proposed instruction to Schedule L appropriate? Are there any other terms that should be included in the instruction?

(a) When Asset-Level Data Would Be Required in the Prospectus

Today we are proposing new Item 1111(h) and Schedule L of Regulation AB which enumerate all of the data points that must be provided for each asset in the asset pool at the time of the offering. Schedule L data would be an integral part of the prospectus, and in order to facilitate investor analysis prior to the time of sale, we are proposing to require issuers to provide Schedule L data as of a recent practicable date that we define as the "measurement date" at the time of a Rule 424(h) prospectus. So that investors receive a data file with final pool information at the time of the offering, we also are proposing that an updated Schedule L, as of the cut-off date for the securitization, be provided with the final prospectus under Rule 424(b).[234] Likewise, if issuers are required to report changes to the pool under Item 6.05 of Form 8–K, updated Schedule L data would be required.[235] As we discuss in Section III.A.3, we are proposing a new Item 6.06 to Form 8–K for issuers to file the XML data file.

Request for Comment

- Is the proposed requirement to provide Schedule L data with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8–K appropriate? Should Schedule L data be required at any other time? If so, please tell us when and why.
- Are the proposed measurement dates appropriate? Are there any data fields that would be inappropriate or too

[227] *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), available at *http://www.americansecuritization.com/.*

[228] Implementation dates for ongoing monthly reporting under the Reporting Package are set for August 1, 2010 on a trial basis and November 1, 2010 on a permanent basis.

[229] MERS is affiliated with the Mortgage Industry Standards Maintenance Organization (MISMO), a not-for profit subsidiary of the Mortgage Bankers Association.

[230] Fannie Mae and Freddie Mac are government sponsored enterprises (GSE's) that purchase mortgage loans and issue or guarantee mortgage-backed securities (MBS). MBS issued or guaranteed by these GSEs have been and continue to be exempt from registration under the Securities Act and reporting under the Securities Exchange Act. As a result, only non-GSE ABS, or so called "private label" ABS, will be required to comply with the new rules. For more information regarding the GSEs, see Task Force on Mortgage-Backed Securities Disclosure, "Staff Report: Enhancing Disclosure in the Mortgage-Backed Securities Markets" (Jan. 2003) available on our Web site at *http://www.sec.gov/news/studies/mortgagebacked.htm.*

[231] *See* Fannie Mae Loan Delivery Data requirements at *https://www.efanniemae.com/sf/refmaterials/prodmortcodes/index.jsp. See* also Freddie Mac Product Delivery requirements at *http://www.freddiemac.com/singlefamily/sell/delivery/.*

[232] The results are collected and published in a quarterly Mortgage Metrics Report. The reports are available at *http://www.occ.gov/mortgage_report/MortgageMetrics.htm* or at *http://www.ots.treas.gov/?p=Mortgage%20Metrics%20Report. See* Joint Press Release of the Office of the Comptroller of the Currency and the Office of Thrift Supervision, "OCC and OTS Expand Data Collection on Mortgage Performance," February 13, 2009, available at *http://www.occ.treas.gov/ftp/release/2009-9.htm.* (attaching Web site link to the data dictionary).

[233] For example, we are proposing an asset-level data point to disclose whether the asset has been modified. The response would be either yes or no. If the answer is no, a preparer or user of the data would then know that asset-level data points related to modifications would not be applicable to that particular asset.

[234] The cut-off date would be the date specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders).

[235] If a new asset is added to the pool during the reporting period, an issuer would be required to provide the asset-level information for each additional asset as required by our proposed revisions to Item 1111 and Item 6.05 on Form 8–K.

burdensome to supply as of two different measurement dates (i.e., the measurement date and the cut-off date)? If so, please specify the data field and provide a detailed explanation.

• Should we provide further guidance about what would be a recent practicable date for purposes of determining the measurement date?

(b) Proposed Disclosure Requirements and Exemptions

We are proposing that issuers of ABS of most asset classes must provide the standardized data points enumerated in Schedule L. The proposed standardized data points would serve to indicate the payment stream related to a particular asset, such as the terms, expected payment amounts, indices and whether and how payment terms change over time. Such data points would be important in order to analyze the future payments on the asset-backed securities. To perform better prepayment analysis or credit analysis, we are proposing data points that indicate the quality of the obligor or the asset origination process. For instance, in the case of residential mortgages, data points we are proposing to require, among others, are credit score of the obligors, employment status, income, and how that information was verified. To perform analysis of the collateral related to the asset in the pool, we are proposing data points related to each property. For instance, in the case of loans or leases secured by automobiles, issuers would need to provide data points related to the type and model of car and the value of the car.

Except with respect to certain asset classes (as described below), we are proposing that every issuer must provide the data points listed under Item 1. General described below. We are proposing to subdivide Schedule L based on the asset class. We believe the general data points are consistent with the principles-based definition of an asset-backed security and apply to almost every asset class underlying a transaction that has been registered in the past, and should also apply to any new asset classes that may be included in a registered offering in the future. We also propose asset class specific data point requirements for eleven specific asset classes: Residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floorplan financings, corporate debt and resecuritizations. We are proposing item requirements for these asset classes because, based on our experience with registered offerings for these types of asset classes, we believe these data points are among those that represent the more useful information for investors.

(i) Proposed Coded Responses

Consistent with our efforts to standardize asset-level disclosure, we are proposing that issuers provide responses to the asset-level disclosure requirements as a date, a number, text or a coded response. The required coded responses will be contained in the EDGAR Technical Specifications. Attached at the end of this release we provide an appendix which contains a table for the proposed general item requirements as well as asset class specific item requirements. Each table lists the proposed item number, the title of the proposed data field, the proposed definition, the proposed response type and codes, if applicable, and proposed category of information. The proposed category of information designates the type of information we are proposing so that users will know when the data point is applicable.

We are sensitive to the possibility that certain asset-level disclosure may raise concerns about the personal privacy of the underlying obligors. In particular, we are aware that data points requiring disclosure about the geographic location of the obligor or the collateralized property, credit scores, income and debt may raise privacy concerns. As we stated in the 2004 ABS Adopting Release, issuers and underwriters should be mindful of any privacy, consumer protection or other regulatory requirements when providing loan-level information, especially given that in most cases, the information would be publicly filed on EDGAR.[236] However, as we noted above, information about credit scores, employment status and income would permit investors to perform better credit analysis of the underlying assets. In light of privacy concerns, instead of requiring issuers to disclose a specific location, credit score, or exact income and debt amounts, we are proposing ranges, or categories of coded responses.

For instance, to designate geographic location of an obligor who is a person, instead of requiring, city, state or zip code of the property, we are proposing that issuers provide the broader geographic delineations of Metropolitan or Micropolitan Statistical Areas.[237] Metropolitan and Micropolitan Statistical Areas are geographic areas, designated by a five-digit number, defined by the U.S. Office of Management and Budget (OMB) for use by Federal statistical agencies in collecting, tabulating, and publishing Federal statistics.[238] A Metropolitan Statistical Area may also contain a subdivision, called a Metropolitan Division.[239] As an example, if the underlying property that serves as collateral to a mortgage is located in Alexandria, Virginia, the issuer would need to designate the geographic location as 47894—Washington-Arlington-Alexandria, DC-VA-MD-WV, the appropriate Metropolitan Division.

For asset-level disclosure data points that require disclosure of obligor credit scores, we are proposing coded responses that represent ranges of credit scores. The ranges are based on the ranges that some issuers already provide in pool-level disclosure. For monthly income and debt ranges, we developed the ranges based on a review of statistical reporting by other governmental agencies.

We also realize that a situation may arise where an appropriate code for disclosure may not be currently available in the technical specifications. To accommodate those situations, our proposals provide a coded response for "not applicable," "unknown" or "other." However, "not applicable," "unknown" or "other" would not be appropriate responses to a significant number of data points and registrants should be mindful of their responsibilities to

[236] *See* Section III.C.1.c. of the 2004 ABS Adopting Release.

[237] Current lists and definitions of Metropolitan and Micropolitan Statistical Areas are available at *http://www.census.gov/population/www/metroareas/metrodef.html.*

[238] A Metropolitan Statistical Area contains a core urban area of 50,000 or more population, and a Micropolitan Area contains an urban core of at least 10,000 (but less than 50,000) population. Each Metro or Micro area consists of one or more counties and includes the counties containing the core urban area, as well as any adjacent counties that have a high degree of social and economic integration (as measured by commuting to work) with the urban core. The OMB also further subdivides and designates New England City and Town Areas. The OMB may also combine two or more of the above designations and identify it as a Combined Statistical Area.

[239] For example, 47900 designates the Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area. 47900 contains two subdivisions. One is 13644 Bethesda-Frederick-Rockville, MD Metropolitan Division which includes Frederick County and Montgomery County. The other is 47894 Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Division which contains the District of Columbia, DC; Calvert County, MD; Charles County, MD; Prince George's County, MD; Arlington County, VA; Clarke County, VA; Fairfax County, VA; Fauquier County, VA; Loudoun County, VA; Prince William County, VA; Spotsylvania County, VA; Stafford County, VA; Warren County, VA; Alexandria City, VA; Fairfax City, VA; Falls Church City, VA; Fredericksburg City, VA; Manassas City, VA; Manassas Park City, VA; and Jefferson County, WV. *See* OMB Bulletin No. 09–01, "Update of Statistical Area Definitions and Guidance on Their Uses," List 3, November 2008.

provide all of the disclosures required in the prospectus and other reports.[240] Additionally, a situation may arise where an issuer would like to disclose other data not already defined in our proposed disclosure requirements.[241] In these cases, registrants should provide appropriate explanatory disclosure. As we discuss in more detail below, we are proposing that issuers file explanatory disclosure and or definitions of additional data points as another exhibit to Form 8–K at the same time the asset-level data file is required to be filed on Form 8–K. The Form 8–K and each of these exhibits would be incorporated by reference into the prospectus.[242]

Request for Comment

- Are the proposed coded responses contained in the attached tables appropriate? Please be specific in your responses by commenting on specific proposed line items and codes.
- The combination of certain asset-level data disclosures may raise privacy concerns. Are there particular asset-level data points that give rise to privacy concerns, in addition to the ones noted above and why? Are there other ways we could provide investors with similar information and lessen privacy concerns? Which information raises the most significant privacy concerns?
- Which data points, or combination of data points would be the most important to an investor's analysis? For instance, if we do not adopt any requirement to disclose geographic location, would the coded range of FICO score, coded range of income, and sales price still be useful to investors? If we do not adopt a requirement to disclose geographic location, a coded range of FICO score and coded range of income, would the sales price alone still be useful to investors? Please be specific in your response.
- Is our approach to geographic location appropriate? Does the use of the Metropolitan or Micropolitan Statistical Area, or Metropolitan Division provide investors with meaningful disclosure? Should we require only Metropolitan and Micropolitan Statistical Area which would be a broader description? For example, for a property in Alexandria, Virginia, 47900–Washington-Arlington-Alexandria, DC-VA-MD-WV Metropolitan Statistical Area would be the appropriate designation that would be a larger geographic area than Metropolitan Division. Would disclosure by state or zip code be appropriate? If a particular geographic area is experiencing a low volume of real estate transactions, would the low volume of transactions make it easier to identify the underlying obligor using other publicly available resources? Are there other ways to designate geographic location that would provide investors meaningful disclosure while also addressing privacy concerns? For instance, instead of requiring geographic location at the asset-level, should we proscribe requirements for a pool-level table that presents the geographic concentration of the pool subdivided by state, size of loan and number of loans? In using such a pool-level disclosure approach would it also be necessary to subdivide by income, credit score and sales price?
- Is our approach to credit scores, income and debt appropriate? Does our approach appropriately balance investor need for the information while addressing privacy concerns? Do the categories provide meaningful ranges for investor analysis? If not, please be specific in your response. Should we instead require asset-level disclosure of the specific credit score, amount of income and amount of debt of an obligor?
- Are there other privacy issues that arise for issuers of ABS backed by foreign assets? How do the privacy laws of foreign jurisdictions differ from U.S. privacy laws? If the privacy laws of foreign jurisdictions are more restrictive regarding the disclosure of information, how should we accommodate issuers of ABS backed by foreign assets? Is there substitute information that could be provided to investors? Please be specific in your response.

(ii) Proposed General Disclosure Requirements

With respect to each asset in the pool, the issuer would be required to provide the disclosure described below. A description of the 28 proposed data points is provided in Table 1 of the Appendix. We believe the proposed general item requirements are basic characteristics of assets that would be useful to investors in ABS across asset classes.

1. A unique asset number applicable only to that asset and the source of the number. We are aware that identifiers for each asset may be generated in many ways. These identification numbers may have been generated at origination or at different times through the securitization process. An asset number is necessary so that investors and other market participants may follow the performance of a loan through ongoing periodic reporting. We do not propose a specific naming or numbering convention; however, we are proposing an instruction to clarify what type of asset numbers would satisfy this requirement and an instruction to clarify that the same asset number should be used to identify the asset for all reports required of an issuer under Section 13(a) or 15(d) of the Exchange Act. For instance, asset number types that would satisfy the requirements could be generated by CUSIP Global Services (CUSIP);[243] the American Securitization Forum (ASF Universal Link); MERS (Mortgage Identification Number); by the registrant;[244] or by using the convention "[CIK-number]-[Sequential asset number]";[245]

2. Whether the asset is designated to a particular collateral group. Some asset pools designate assets to particular groups in order to determine how cash flows will be passed on to investors;

3. Information regarding origination, such as origination date, original amount of the loan or contract, original term of the asset in number of months;

4. The asset maturity date, which is the month the final payment on the asset is scheduled to be made;

5. The original amortization term, which is the number of months in which the asset would be retired if the amortizing principal and interest were to be paid each month;

6. Information regarding interest rate, such as the original interest rate, amortization type which means whether the interest rate is fixed or adjustable;

7. If the asset has an interest only term, the number of months in which the obligor is permitted to pay only interest on the asset;

8. Whether the interest calculation is simple or actuarial. A simple interest calculation is always based on the original principal, thus interest on interest is not included. An actuarial calculation is based on principal plus accrued interest;

9. The identity of the primary servicer that has the right to service the asset, either by name or by the MERS organization number (in the case of RMBS);

[240] *See* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b–21 [17 CFR 240.12b–21].

[241] *See* our discussion regarding adding tags to our XML schema in Section III.A.4. below.

[242] *See* Section III.A.4. below, proposed Item 6.06 to Form 8–K and proposed Item 601(b)(103) of Regulation S–K.

[243] A CUSIP number would be appropriate if the asset being securitized itself is a security.

[244] For instance, if a registrant uses its own unique numbering to track the asset throughout its life, disclosure of that number would satisfy this proposed item requirement.

[245] For instance, if a registrant used the "[CIK-number]-[Sequential asset number]" format, the number would first list the 10-digit CIK of the issuing entity and the second half would be a number for the pool, e.g, "0000350001–000001."

10. The servicing fees, either expressed as a percentage of the asset amount or as a flat-dollar amount, as applicable;

11. The servicing advance methodology by indicating the code that best describes the manner in which principal and/or interest are to be advanced by the servicer;

12. Whether the loan or asset was an exception to defined or standardized underwriting criteria; and

13. The measurement date, which would be the date the asset-level data is provided in accordance with proposed Item 1111(h)(1).[246]

As discussed above, proposed Item 1111(h)(2) would also require issuers to provide Schedule L data as part of a final prospectus filed in accordance with Rule 424(b), as of the cut-off date for the securitization.[247] The cut-off date would be the date specified in the instruments governing the transaction (*i.e.,* the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders). In addition, we are proposing the following data points to update for activity that could occur during the period between the time the asset-level data would have been previously provided in the proposed Rule 424(h) prospectus and the cut-off date.

1. The current asset balance, current interest rate, and current payment amount due.

2. The number of days the obligor is delinquent and the number of payments the obligor is past due as of the cut-off date.

3. If the obligor has not made the full scheduled payment, the number of days between the scheduled payment date and the cut-off date.[248] We are proposing this item requirement so that investors will receive comparable data about the payment performance of an asset.[249] We note that the disclosure provided in response to this proposed requirement may differ from other asset-level or pool-level delinquency disclosure due to the various delinquency recognition policies across issuers and asset classes.[250]

4. Remaining term to maturity, which would be the number of months between the cut-off date and asset maturity date.

Request for Comment

- Are the general data points that would apply to all securitizations (other than credit cards, charge cards and stranded costs) appropriate? Should any be deleted or made applicable only to certain asset classes? If so, what data points? Are there any other data points that should apply to all asset classes? Please provide a detailed explanation of the reasons why or why not.
- Is the approach to asset number identifier workable? Should we only require or permit one type of asset number for all asset classes? If so, which one would be most useful? It appears that our proposed naming convention of "[CIK-number]-[Sequential asset number]" would be applicable to all asset classes. Does the use of an asset number alleviate potential privacy issues for the underlying obligor? Why or why not? What issues arise if the asset number is determined by the registrant? Would there be any issues with investors being able to specifically identify each asset and follow its performance through periodic reporting?
- Should we require a data point to disclose the CIK number of the sponsor? Would all sponsors have a CIK number? If not, in what other ways could we require standardized disclosure of the identity of sponsors?
- Should we define delinquency in order to provide comparable delinquency disclosure across issuers and asset classes? If so, how should it be defined and why? Would market participants be able to make changes to their current systems to capture information to satisfy a standardized delinquency disclosure requirement? Would such a requirement be burdensome? Is there another way to provide comparable delinquency disclosure across issuers and asset classes? Please be detailed in your response.
- The response to some data points requires the identification of a party (*e.g.,* originator or servicer) or the MERS generated number of the organization. Is this approach to identification workable? Do any issues arise with allowing a text response to these types of data points? What alternatives would alleviate such issues? What if the organization does not have a MERS number?

(iii) Asset Specific Data Points

As discussed in detail below, we are proposing to further subdivide the Schedule L data points so that issuers can determine whether or not the data field applies to their transaction. For instance, if the asset pool contains only residential mortgages, then issuers would only need to provide those data points designated under proposed Items 1 and 2 of Schedule L. Similarly, if the asset pool contains only student loans, the issuer would only need to provide those data points designated under proposed Items 1 and 8. If the asset pool contains assets for which we have not proposed asset class specific data points, the issuer would only need to provide those general data points designated under proposed Item 1. Further, if the asset pool of residential mortgages consists only of fixed-rate mortgages, all of the data points related to adjustable rate mortgages[251] need not be included in the data file. Likewise, in a pool of student loans, if the asset pool comprised only loans issued under a federal student loan program, such as the Federal Family Education Loan Program (FFELP),[252] information related

[246] As discussed above, proposed Item 1111(h)(1) would require issuers provide Schedule L data at the time of a Rule 424(h) prospectus as of a recent practicable date.

[247] We note that the proposed requirement to file Schedule L data with the final prospectus does not address the timing and adequacy of information available to the investor at the time the investment decision is made. Under Securities Act Rule 159, information conveyed after the time of the contract of sale (e.g., a final prospectus) is not taken into account in evaluating the adequacy of information available to the investor at the time the investment decision was made.

[248] For example, if the scheduled payment date is December 25, and the full payment due is not received by the cut-off date for the report, December 31, the appropriate response to this item would be 6 days. We note that some delinquency recognition policies may not consider the payment delinquent at the same point in time.

[249] We are also proposing that issuers be required to report the number of days a full scheduled payment is past due in each Form 10–D. *See* discussion in Section III.A.2.a.

[250] We are proposing this item instead of proposing to define delinquency for all issuers. In the 2004 ABS Adopting Release we stated that delinquency should be determined in accordance with any of the following: The transaction agreements for the asset-backed securities; the delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset or the servicer of the pool asset; or the delinquency recognition policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed above or the program or regulatory entity that oversees the program under which the pool asset was originated. We adopted that definition because commenters requested flexibility since policies relating to delinquency vary somewhat across asset types and sponsors. The approach we adopted gave consideration to a party's delinquency recognition policies and we emphasized robust disclosure about those policies. For instance, some sponsors do not consider an obligor delinquent when any portion of a contractually required payment is late, but instead only when less than some percentage or amount of a payment is received. *See* Section III.A.d.iii. of the 2004 ABS Adopting Release. In the context of standardized asset-level data, we believe the disclosure of the number of days from the scheduled payment due date and the cut-off date allows flexibility for the definition of delinquent while allowing for analysis and comparability of asset-level data.

[251] Item 2(a)(16) of proposed Schedule L.

[252] FFELP loans are generally based on need, instead of credit quality of the underlying obligor. For more information, see the U.S. Department of

Continued

to private label student loan programs need not be included in the data file.[253] The issuer, however, may need to provide data in the appropriate indicator field, which is a "yes" or "no" answer to whether the characteristic is present. This approach is designed to facilitate investor review of the asset-level data.

Request for Comment

• Is the proposed subdivision of Schedule L appropriate? Would this approach facilitate investor review of the asset-level data?

(iv) Proposed Exemptions

We are proposing to exclude ABS backed by credit cards, charge cards, and stranded costs from the requirement to provide asset-level data. Based on staff reviews of credit card and charge card asset pools, it appears that some may contain as many as 20 to 45 million accounts. Based on the overwhelming volume of data in these types of asset classes, we do not believe that granular asset-level information would be as useful for investors and the provision of asset-level data may be cost-prohibitive for issuers. We have also heard anecdotally that investors in credit card or charge card ABS do not have a desire for asset-level data. For these asset classes, we are proposing that credit card ABS issuers provide grouped account data that we discuss below.[254]

For ABS backed by stranded costs, the underlying asset is transition property or system restoration property. Stranded costs are the costs associated with a decline in the value of electricity-generating assets due to restructuring of the industry, and the underlying property is called transition property.[255] System restoration property is a similar underlying asset, but provides for recovery of system restoration costs incurred by electric utilities as a result of hurricanes, tropical storms, ice or snow storms, floods and other weather-related events and natural disasters. These types of property are usually created by the action of a state legislature or other designated authority.[256] The property generally includes a right and interest to impose, collect and receive charges payable by electric customers in a particular territory. Also, this right usually provides that the designated state authority may periodically adjust the charges billed to customers in order to recover the stranded costs in the event all collections are not made. Because transition property is not originated on a customer-by-customer basis, and is instead the right to impose charges on customers based on electrical usage, we preliminarily do not believe it is appropriate to require asset-level data be provided for stranded cost ABS.

Request for Comment

• Should asset-level data be provided by credit card, charge card or stranded cost issuers? If so, please explain why and what asset-level data should be provided.

• Would requiring asset-level data for these asset classes, rather than grouped asset data, as proposed below, be useful for investors? Is the volume of data in these types of asset classes a concern to investors? If so, are there ways to address this, for example, by facilitating the presentation of the data, to make it more useful to investors?

• Are there any other asset classes that should be exempt from the requirement to provide asset-level data and why?

• In light of the proposal not to set forth asset-level data for these assets, is there any pool-level data that should be provided by credit card, charge card, or stranded cost issuers? If so, please identify the pool-level data that we should require and explain why.

• Should we specify standardized definitions for pool-level data? For instance, for credit cards or charge cards, should we define terms such as modification, excess spread and charge-off? How are issuers currently defining these various terms?

• Should pool-level data for credit cards and charge cards be provided at the same time that we propose for other issuers to provide Schedule L data (i.e., with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8–K)? Should it also be provided at any other time, such as in periodic reports? If so, please tell us when and why.

• Should we revise Item 1111 to require pool-level disclosure in a standardized format for ABS backed by credit cards or charge cards? Current Item 1111 requires issuers to present pool-level statistical information in appropriate distributional groups or incremental ranges in addition to presenting appropriate overall pool totals, averages and weighted averages, if such presentation will aid in the understanding of the data. In the case of credit cards and charge cards, should we proscribe the distributional groups or incremental ranges for material pool characteristics such as credit scores, credit limit, account balance, account age, geographic location or annual percentage rate (APR)? [257] For instance, in the case of FICO credit scores, should the distributional groups be similar to the coded response ranges for asset-level data in proposed Item 2(c)(3) of Schedule L? [258] What other types of credit scores are used by credit card issuers, if any? Are any proprietary? What distributional groups would be useful for disclosure of other types of credit scores?

○ In the case of credit limit and account balance, should we proscribe the following distributional groups for disclosure with respect to credit card and charge card pools: (1) <$1,000; (2) $1,000–$5,000; (3) $5,000–$10,000; (4) $10,000–$20,000; (5) $20,000–$30,000; (6) $30,000–$40,000; (7) $40,000–$50,000; and (8) greater than $50,000? Would using these distribution groups lead to useful disclosure?

○ In the case of account age, should we proscribe the following distributional groups for disclosure with respect to credit card and charge card pools: (1) 12 months or less; (2) 12–24 months; (3) 24–36 months; (4) 36–48 months; (5) 48–60 months; (6) 60–84 months; (7) 84–120 months; and (8) over 120 months? Would using these distribution groups lead to useful disclosure?

○ In the case of geographic location, should we require disclosure by state or by Metropolitan Statistical Area for credit card and charge card pools? [259] Which would be more useful? Should issuers be required to disclose all states or Metropolitan Statistical Areas for the entire pool, or only the top 10, 20 or some other number?

○ In the case of interest rate or APR, what would be the appropriate

Education Web site at *http://www2.ed.gov/programs/ffel/index.html*.

[253] Item 8(c) of proposed Schedule L.

[254] *See* Section III.A.3.

[255] When the electricity industry deregulated, prices for electricity were expected to decline as competition was introduced into the market. With prices projected to fall more than production costs, utilities would earn less and the value of their assets would shrink. Thus, with falling prices eroding the value of the utilities' assets, some of their costs would be unrecoverable, or stranded. *See Electric Utilities: Deregulation and Stranded Costs, Congressional Budget Office,* October 1998.

[256] *See, e.g.,* Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 39.001–.463.

[257] In the FDIC Securitization Proposal, the FDIC also solicited comments on specific questions of disclosure related to securitizations. We note the suggestions of one commenter regarding the disclosure that should be provided by issuers of ABS backed by credit cards. *See* comment letter from MetLife on the FDIC Securitization Proposal ("MetLife FDIC Letter"), available at *http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html*.

[258] *See* Table 2 of the Appendix to this release.

[259] *See* discussion in Section III. A.1.b.i. above.

distributional groups? For example, would the following distributional groups be appropriate: (1) 0 to 1.99%; (2) 2.00% to 4.99%; (3) 5.00% to 9.99%; (4) 10.00% to 14.99%; (5) 15.00% to 19.99%; (6) 20.00% to 24.99%; (7) 25.00% to 29.99%; (8) 30.00% to 34.99%; (9) 35.00% to 39.99%; and (10) over 40.00%? Are there other characteristics that should be included in the same statistical table of information, such as how many accounts are currently deferring interest, deferring interest/principal, or other types of promotions?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the amount of credit that is available for purchases? If so, should we proscribe the following distributional groups: (1) <$1,000; (2) $1,000–$5,000; (3) $5,000–$10,000; (4) $10,000–$20,000; (5) $20,000–$30,000; (6) $30,000–$40,000; (7) $40,000–$50,000; and (8) greater than $50,000? Would using these distribution groups lead to useful disclosure? Would this information be useful to investors and why?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the type of products in the pool? For instance, credit card products could include affinity,[260] co-branded cards,[261] merchant cards, partner cards, and reward cards. Would this information be useful to investors and why?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether there any accounts in the pool are under a debt management program, have redefaulted, are diluted or whether the account has been closed? Would this information be useful to investors and why?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose payment habits of the obligors, such as the number of accounts, or percentage of the pool that make minimum payments, pays balances in full, or other payment types? Are there any other categories of payment behavior that would be useful to investors?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether the obligors are homeowners, mortgage holders or renters? Would this information be useful to investors and why? Do issuers have this information? Because credit card securitizations are usually structured as master trusts, how would issuers be able to provide updated information at the time of each takedown?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose whether the obligors are employed and if so, the type of employment? Should we specify the categories for this type of information, such as: (1) Professional; (2) technical; (3) managerial; (4) clerical; (5) sales; (6) service; (7) agricultural; (8) laborers; (9) military; (10) student; (11) retired; (12) unemployed; and (13) unknown? Would this information be useful to investors and why?

○ Should we require issuers of ABS backed by credit cards and charge cards provide statistical tables to disclose the level of education of the obligors? Should we specify the categories for this type of information such as: (1) Graduate; (2) college-4 year; (3) college-2 year; (4) high school or (5) unknown? Would this information be useful to investors and why?

○ Should we require issuers of ABS backed by credit cards and charge cards to provide statistical tables to disclose the debt-to-income ratio of the obligors? Would this information be useful to investors and why? Should the debt-to-income ratio be defined and calculated in the same manner as required in Schedule L?[262] What would the appropriate distributional categories be? For example, would the following distributional groups be appropriate: (1) 0 to 4.99%; (2) 5.00% to 9.99%; (3) 10.00% to 14.99%; (4) 15.00% to 19.99%; (5) 20.00% to 24.99%; (6) 25.00% to 29.99%; (7) 30.00% to 34.99%; (8) 35.00% to 39.99%; (9) 40.00% to 44.99%; (10) 45.00% to 49.99%; (11) 50.00% to 54.99%; (12) 55.00% to 59.99%; (13) 60.00% to 64.99%; (14) 65.00 to 69.99%; (15) 70.00% to 74.99%; (16) over 75.00%?

○ Because credit card securitizations are usually structured as master trusts, how would issuers be able to provide updated information described in the previous four bullet points at the time of each takedown?

○ Should we specify the data that should be presented for each distributional group in the above requests for comment? For instance, for each distributional group of credit scores, issuers typically provide a table detailing the number of accounts, dollar amount and percentage of the pool. Should we also require that issuers provide the following information for each credit score distributional group in the same table: (1) Weighted average credit limit; (2) weighted average utilization rate; (3) weighted average account age; (4) percentage of obligors that pay in full; (5) percentage of obligors that make minimum payments; (6) weighted average credit score; (7) weighted average APR; (8) portfolio yield; (9) amount of interchange; (10) amount of fees; (11) amount of gross charge-offs; (12) amount of recoveries; (13) amount of prepayments; (14) dollar amount of accounts that are over 30 days delinquent; (15) number of accounts that are over 30 days delinquent; and (16) weighted average excess spread?[263] Is there any other information that would be useful for investors in this format?

• Should we require aggregated asset-level data in a machine-readable form for issuers of ABS backed by stranded costs so that investors may download the data and input it into a waterfall computer program? If so, please specify the characteristics, the appropriate distributional groups and related definitions and formulas, if applicable.

(c) Residential Mortgage-Backed Securities

We are proposing 137 data points for ABS backed by residential mortgages. The staff has surveyed the data and definitions provided by the organizations mentioned above, as well as other industry sources. We are proposing to require additional data fields that relate to residential mortgages that are based mainly on information already typically provided by sellers to Fannie Mae and Freddie Mac or likely to be collected by participants in Project RESTART.

Some of the Fannie Mae, Freddie Mac and Project RESTART data points appear in the general section (Item 1), because we believe those data points would apply to all types of asset-backed securities. We did not, however, include every data point included in those loan-level packages. We believe that there are numerous ways to capture the same data, and after reviewing other loan-level data dictionaries, our definitions may have minor differences from those in Fannie Mae, Freddie Mac and Project RESTART because we wanted to make sure that we captured disclosure that may be provided to other organizations. For instance, we believe that many of the points are also consistent with the data dictionary developed by

[260] Affinity card programs are offered by organizations such as universities, alumni associations, sports teams, professional associations and others.

[261] A co-branded credit card generally is a credit card jointly sponsored by a bank and retail merchant, such as a department store.

[262] *See* proposed Items 2(a)(21)(iv) and 2(a)(20)(v) of Schedule L.

[263] *See, e.g.,* Appendix A, Attachment I of the MetLife FDIC Letter.

MISMO.[264] We also reviewed other data definitions currently used by banks for reporting to the OCC and OTS.[265] As noted above, we also are proposing several indicator fields that usually require a "yes" or "no" answer in order to facilitate investor review of the data.

With respect to each mortgage in the pool, the issuer would be required to disclose the information described below. A complete description of each proposed data point is provided in Table 2 of the Appendix to this release.

1. A code that describes the loan purpose.

2. The lien position of the loan.

3. Whether the obligor is subject to any prepayment penalties, a code that describes the type of penalty, the term of penalty and a code that describes how the penalty is calculated.

4. The origination channel and whether a broker took the application.

5. The Nationwide Mortgage Licensing System (NMLS) loan originator number and loan origination company number.[266]

6. Whether the loan allows for negative amortization and information regarding the negative amortization terms which would include:

a. The maximum dollar amount and the number of months negative amortization amount allowed;

b. The initial and subsequent number of months an obligor can initially pay the minimum payment before a new payment is determined;

c. The current negative amortization amount that has accumulated;

d. The number of months the payment is fixed and the initial and subsequent limits on payment increases and decreases;

e. The length of the initial and any subsequent recast periods in number of months; and

f. The current minimum payment amount.

7. Whether the loan has been modified. If so:

a. The number of modifications;

b. A code that describes the reason for modification;

c. The effective date of the modification;

d. Updated debt-to-income ratios of the obligor;

e. The total amount added to the principal balance of the loan due to the modification or capitalized amount;

f. Any deferred amount that is non-interest bearing; and

g. The pre-modification interest rate, the pre-modification payment amount, and the forgiven principal and interest amounts.

8. Whether the loan documents require a lump-sum payment of principal at maturity, otherwise known as a balloon loan.

9. In the case of a refinance transaction, the amount of cash the obligor received.

10. The number of months a buydown period would be in effect. A buydown period is when a lump sum payment is made to the creditor by the obligor or by a third party to reduce the amount of some or all of the obligor's periodic payments.

11. The date through which interest is paid with the current payment, which is the date from which interest will be calculated for the application of the next payment.

12. The number of days after which a servicer can stop advancing funds on a delinquent loan.

13. Amount of any junior mortgages on the property and if the loan in the pool is a junior loan, information on the senior loan such as origination date, amount, loan type, hybrid period, and negative amortization limit.

14. If the loan is an adjustable rate mortgage:

a. The index on which the adjustable rate is based;

b. The margin, which is the number of percentage points added to the index to establish the new rate;

c. The fully indexed rate, which is the index rate plus the margin;

d. If the interest rate is initially fixed for a period of time, the number of months between the first payment date and the first interest adjustment date;

e. The maximum percentage by which a mortgage rate may increase or decrease, initially, at subsequent points in time, and over the lifetime of the loan;

f. The number of months between interest rate reset periods;

g. The number of days prior to an interest rate effective date which is used to determine the appropriate index rate or lookback;

h. The date of the next interest rate adjustment;

i. The method of rounding and the rounding percentage;

j. Whether the loan is an option ARM, that is whether the obligor can choose payment options;

k. A code that describes the means of computing the lowest monthly payment available to the obligor after recast. When the loan is recast, a new minimum payment is calculated to fully amortize the loan over the remaining term of the loan;

l. The initial minimum payment an obligor is required to make; and

m. Whether the loan is convertible to a fixed interest rate.

15. Whether the loan is a home equity line of credit, or HELOC, and the related period in which the obligor may draw funds against the HELOC account.

With respect to each mortgage loan in the pool, the issuer would be required to disclose the information on the property securing the loan described below.

1. Geographic location of the property, designated by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

2. A code that describes the property type and occupancy status of the property.

3. Sales price.

4. The appraised value used to approve the loan and most recent appraised value, the property valuation method, date of valuation, valuation scores and types of scores.

5. Combined and original loan-to-value ratios and the calculation date.

6. If the obligor pledged financial assets to the lender instead of making a down payment, the total value of assets pledged as collateral for the loan at the time of origination.

If the loans in the pool relate to manufactured housing, the issuer would

[264] As noted above, MISMO is an affiliate of MERS. The MISMO data dictionary is available at *http://www.mismo.org/pages/Residential%20Specifications.aspx.*

[265] *See* "OCC/OTS Mortgage Metrics—Loan Level Data Collection: Field Definitions," January 7, 2009, available at *http://www.occ.treas.gov/ftp/release/2009-9a.pdf.*

[266] In 2008, Congress passed The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the SAFE Act) which required the creation of a Nationwide Mortgage Licensing System and Registry. The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry. The SAFE Act was enacted as part of the Housing and Economic Recovery Act of 2008, Public Law 110–289, Division A, Title V, sections 1501–1517, 122 Stat. 2654, 2810–2824 (July 30, 2008), codified at 12 U.S.C. 5101–5116. The Federal Housing Finance Agency will require that mortgages purchased by Freddie Mac and Fannie Mae include loan-level identifiers of the loan originator and loan origination company for mortgage applications taken on or after July 1, 2010. The original date of compliance was January 1, 2010; however, this has been extended to July 1, 2010. *See* Federal Housing Finance Agency News Release, "FHFA Announces New Mortgage Data Requirements," January 15, 2009, available at *http://www.fhfa.gov/webfiles/400/LoanOrigIDS11509.pdf. See also* Freddie Mac Bulletin 2009–27, December 4, 2009, available at *http://www.freddiemac.com/sell/guide/bulletins/pdf/bll0927.pdf* and Fannie Mae Selling Notice "Mortgage Loan Data Requirements—Update," October 6, 2009, available at *https://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2009/ntce100609.pdf.* The NMLS maintains the following Web site: *http://mortgage.nationwidelicensingsystem.org/Pages/default.aspx.*

be required to disclose the information described below.

1. A code that describes the interest of others in the real estate.

2. A code that describes the community ownership structure.

3. The name of manufacturer and model name, the year the home was manufactured and whether it was constructed in accordance with the 1976 HUD Code.

4. Gross and net invoice price of the home.

5. Loan to invoice ratios, whether the loan was made by a lender related to the community, and whether the securitized property is considered chattel or real estate.

6. The source of the obligor's down payment.

With respect to each mortgage in the pool, the issuer would be required to disclose the information on the obligor described below.

1. Obligor and co-obligor's credit scores and types of scores.

2. Obligor and co-obligor's wage and other income and a code that describes the level of verification.

3. A code that describes the level of verification of assets of the obligor and co-obligor.

4. Obligor and co-obligor's length of employment, whether they are self-employed and a code that describes the level of verification.

5. The dollar amount of verified liquid/cash reserves after the closing of the mortgage loan.

6. The total number of properties owned by the obligor that currently secure mortgages.

7. The amount of the obligor's other monthly debt.

8. The obligor's debt to income ratio used by the originator to qualify the loan.

9. A code that describes the type of payment used to qualify the obligor for the loan, such as the payment under the starting interest rate, the first year cap rate, the interest only amount, the fully indexed rate or the minimum payment.

10. The percentage of down payment from obligor's own funds other than any gift or borrowed funds.

11. The number of obligors on the loan.

12. Any other monthly payment due on the property other than principal and interest.

13. The number of months since any obligor bankruptcy or foreclosure.

14. The obligor and co-obligor's wage income, other income and all income.

With regard to mortgage insurance, the issuer would be required to disclose the information below.

1. Whether mortgage insurance is required.

2. The name of the mortgage insurance company, coverage plan type, certificate number, and insurance coverage percentage.

3. Whether the insurance is lender or borrower paid.

4. If there is pool insurance, the name of pool insurance provider and pool insurance stop loss percentage.

Request for Comment

- Are all of the RMBS data points appropriate? Are there other data points that should be required for all RMBS issuers? Are any data points not necessary or overly burdensome to obtain? Please specify the proposed data points and provide a detailed explanation of the reasons why or why not.
- Some data points request the results of calculations, such as debt-to-income ratios. Can these ratios otherwise be calculated from data provided by the other asset-level data points? If so, can users of the information independently calculate these data points? And should we not require these data points to be included in the asset-level data file?
- Should we include a data point to require what effort an originator or sponsor made to see if there are other loans secured by the same property? If we were to code the response, what code descriptions should we provide?
- Are the proposed type of responses and coded responses appropriate? Are there additional codes that should be included? Please provide a detailed explanation of the reasons why or why not.
- What privacy concerns arise if we require issuers to disclose the sales price of the property, if any? Would rounding the sales price to the nearest thousandth alleviate privacy concerns? If not, what would be the appropriate rounding method? If we instead required the disclosure of sales price be provided by a coded range of dollar amounts, would that alleviate privacy concerns? What would be the appropriate ranges of dollar amounts? Would the above mentioned options have an effect on an investor's ability to analyze the asset-level data or use the waterfall computer program? If so, please be specific in your response. In what other ways could we require the disclosure of sales price so that investors receive useful information and also address any privacy concerns?

(d) Commercial Mortgage-Backed Securities

We are proposing 61 data points for ABS backed by commercial mortgages. The data points we are proposing to require are primarily based on the definitions included in the CRE Finance Council Investor Reporting Package, current Regulation AB requirements and staff review of current disclosure. The CRE Finance Council disclosure package standardizes bond, loan and property level information for commercial mortgage-backed securities.[267] We are not proposing, however, to include every data point included in the CRE Finance Council reporting package. Some of the data points already appear in the general section (Item 1), because we believe those data points would apply to all types of asset-backed securities. We did not include others because we did not believe the level of detail was necessary for investor analysis as we believe that the most important data points for CMBS are those that relate to the loan term and the property. With respect to each commercial mortgage loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point and related response is provided in Table 3 to the Appendix to this release.

1. A code that describes the loan structure, including the seniority of participated mortgage loan components.

2. The current remaining term of the loan.

3. A code that describes the payment method, the amount of the periodic principal and interest payment, and frequency of payment for the loan, frequency that the payment will be adjusted, and grace days allowed.

4. The number of properties that serve as mortgage collateral for the loan;

5. The hyper-amortizing date, which is the current anticipated repayment date after which principal and interest may amortize at an accelerated rate, and/or interest to the mortgagor increases substantially.

6. Whether the loan is interest only or requires a balloon payment.

7. Whether the obligor is subject to prepayment penalties, the effective date after which the lender allows prepayment of a loan, the date after which yield maintenance prepayment penalties are no longer effective and the date after which prepayment premiums are no longer effective.

8. If the loan permits negative amortization, the maximum percentage and amount of the original loan balance that can be added to the original loan balance as a result of negative amortization.

9. If the loan is an adjustable rate mortgage:

[267] According to the CRE Finance Council, transaction disclosure should be updated and provided monthly. *See http://www.crefc.org/.*

a. The index on which the adjustable rate is based;

b. The first rate adjustment date;

c. The first payment adjustment date;

d. The number of percentage points that are added to the current index rate to establish the new note rate each interest adjustment date;

e. The maximum percentage by which a mortgage rate may increase or decrease, initially, at subsequent points in time, and over the lifetime of the loan;

f. A code describing the frequency with which the periodic mortgage rate is reset and a code describing the frequency with which the periodic mortgage payment will be adjusted; and

g. The number of days prior to an interest rate effective date which is used to determine the appropriate index rate or lookback.

10. Whether the loan had been modified from its terms at the time of origination.

The issuer also would be required to provide information on each of the properties collateralizing the loan. This would include:

1. The property name, geographic location, designated by zip code, as applicable, and the year that the property was built;

2. A code describing the current use of the property, including net rentable square feet of a property, number of units/beds/rooms, and percentage of rentable space occupied by tenants;

3. The valuation amount of the property as of a valuation date and source of valuation;

4. The total underwritten revenues from all sources for a property and total underwritten operating expenses (including real estate taxes, insurance, management fees, utilities, and repairs and maintenance); [268]

5. The date when the defeasance option becomes available. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan; [269]

6. Net operating income and net cash flow, including a code describing how operating income and net cash flow were calculated (*i.e.,* using the CMSA standard, using a definition in the pooling and servicing agreement, or using the underwriting method);

7. The ratio of underwritten net operating income to debt service, the ratio of underwritten net cash flow to debt service, and an indicator showing how the debt service coverage ratio was calculated; [270] and

8. The three largest tenants (based on square feet), including square feet leased by the tenant and lease expiration dates of the tenant.

We note that some of the data points that we are proposing to include in Schedule L are currently required on a loan-level basis under existing Item 1111(b)(9)(i) of Regulation AB.[271] Such items are described in the list above and relate to: the location and use of each property; net operating income and net cash flow information, as well as the components of net operating income and net cash flow, for each mortgaged property; current occupancy rates for each mortgaged property and the identity, square feet occupied by and lease expiration dates for the three largest tenants at each mortgaged property. Issuers of ABS backed by CMBS would be required to continue to provide the information required by Item 1111(b)(9)(i) in the prospectus in a narrative form.

Request for Comment

- Are all of the CMBS data points appropriate? Is there any reason not to incorporate any of the requirements for commercial mortgage-backed securities into Schedule L? Are there any additional fields we should include? Are there any changes we should make for specific types of commercial properties?
- Should we include the current Item 1111(b)(9)(i) asset-level disclosure requirement for CMBS in Schedule L, as proposed? Should we eliminate the requirement to provide the asset-level information in narrative form? If so, would any material information relating to a commercial mortgage be lost?
- We are proposing to require an indicator that shows how net operating income and net cash flow were calculated for commercial mortgages. The code options for this indicator would show whether these items were calculated using a CMSA standard, using a definition in the pooling and servicing agreement, or using an underwriting method. Are these appropriate codes? Are there any additional codes that should be included?
- We are proposing to require an indicator that shows how the debt service coverage ratio was calculated for commercial mortgages. The code options for this indicator would be: (1) Average—not all properties received financial statements, and the servicer allocates debt service only to properties where financial statements are received; (2) Consolidated—all properties reported on one "rolled up" financial statement from the borrower, (3) Full—all financial statements collected for all properties, (4) None Collected—no financial statements were received; (5) Partial—not all properties received financial statements and servicer to leave empty; and (6) "Worst Case"—not all properties received financial statements, and servicer allocates 100% of debt service to all properties where financial statements are received. Are these codes appropriate? Are there additional codes that should be included?
- We currently require disclosure of the three largest tenants that occupy the underlying property in the prospectus. Should we also require issuers to disclose whether the named tenants are affiliated with the obligor as a data point in Schedule L and in narrative form in the prospectus? Should we require a description of the relation in narrative form?
- Should we continue to require Item 1111(b)(9)(i) data in the prospectus, as proposed, or is the proposed asset-level data sufficient?

(e) Other Asset Classes

We are unaware of any other organization that has standardized data points for asset classes other than mortgages for investor reporting.[272] As we explain above, standardized data points provide disclosure to investors about the payment stream and amount of payments related to individual assets;

[268] For this purpose "underwritten" means the amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller. We believe issuers should include narrative disclosure about the assumptions used in the prospectus.

[269] *See* Mary Stuart Freydberg and Mary MacNeill, "*Defeasance by Design: Frequently Asked Questions*," CMBS World, March 1999, available at *http://www.cmsaglobal.org/cmbsworld/cmbsworld_toc.aspx?folderid=31374.*

[270] For this purpose, "underwritten" means that the amount disclosed is adjusted based on a number of assumptions made by the mortgage originator or seller. We believe issuers should include narrative disclosure about the assumptions used in the prospectus. Such an indicator would consider whether the servicer allocates debt service only to properties where financial statements are received, whether all properties are reported on one rolled up financial statement from the borrower, whether all financial statements were collected for all properties, whether no financial statements were received, whether not all properties received financial statements and the servicer leaves empty, or whether or not all properties received financial statements and the servicer allocates 100% of debt service to all properties where financial statements are received.

[271] Specifically, we are proposing to include the requirements of Item 1111(b)(9)(i)(A), (B), (C), and (D) in Schedule L.

[272] We note that the ASF contemplates expanding Project RESTART to other major asset classes, such as student loans, credit cards and automobile securitizations. *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 29, available at *http://www.americansecuritization.com/.*

make it possible for users to perform prepayment and credit analysis on an individual asset, and evaluate the collateral, if any, that secures the individual asset.[273] Consequently, in order to make the asset-level information useful to investors, we are proposing data points derived from the aggregate pool-level disclosure that is commonly provided in prospectuses for the following asset classes: Automobile loans and leases; equipment loans and leases; student loans; floorplan financing; repackagings of corporate debt and resecuritizations. We are also proposing to add several data points related to obligor and co-obligor income, assets, employment, and credit scoring. These data points mirror the definitions proposed for RMBS in an effort to provide more robust disclosure about obligor credit quality. We solicit comment on all of our proposed asset specific data points and have specific questions on certain asset classes.

Request for Comment

- Are there any organizations that have produced standardized data definitions for other asset classes? If so, would these definitions be appropriate for the proposed asset specific data points?
- Are the asset specific data points appropriate? What other data points should be required by all issuers of that asset class? Please provide a detailed explanation of the reasons why or why not.

(i) Automobiles

Asset-backed securities may be backed by a pool of automobile loans or automobile leases. We are proposing to require 31 additional data fields that relate to ABS backed by loans for the purchase of automobiles and 33 data fields that relate to ABS backed by automobile leases. With respect to each loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 4 for automobile loans and Table 5 for automobile leases.

1. Whether payments are required monthly or a balloon payment is due;
2. Whether a form of subsidy was received by the borrower, such as an incentive or rebate;
3. Geographic location of the dealer by zip code;
4. The vehicle manufacturer, model, model year, vehicle type and whether it is new or used;
5. The vehicle value and source of vehicle value at the time of origination;
6. For leases, base residual value and source of residual value;
7. The obligor and co-obligor's credit scores and credit score type;
8. The obligor and co-obligor's wage and other income and a code that describes the level of verification;
9. A code that describes the level of verification of assets of the obligor and co-obligor;
10. The obligor and co-obligor's length of employment and a code that describes the level of verification; and
11. The geographic location of the obligor by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Request for Comment

- Are all of the automobile data points appropriate? What other data points should be required by all issuers of ABS backed by automobile loans or leases? Please provide a detailed explanation of the reasons why or why not.
- For ABS backed by automobile leases, should we require a field indicating whether the lessor or lessee is responsible for selling the vehicle at the end of the lease? If so, please explain why.
- We are proposing to require an indicator for the source of the vehicle value. The code options for this indicator would be: (1) Invoice price; (2) Sales Price; (3) Kelly Blue Book; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for the source of a vehicle's residual value. The code options for this indicator would be: (1) Black Book; (2) Automotive Lease Guide; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?

(ii) Equipment

We are proposing to require five additional data fields that relate to ABS backed by equipment loans and eight that relate to equipment leases. With respect to each equipment loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 6 for equipment loans and Table 7 for equipment leases.

1. The frequency of payments, such as whether payments are due monthly, quarterly, semiannually, or annually.
2. The type of equipment financed and whether it is new or used.
3. The obligor industry and geographic location as indicated by zip code.
4. For leases, whether the lease type is a true lease or a finance lease.
5. For leases, the residual value of the equipment and source of residual value.

Request for Comment

- Are all of the equipment data points appropriate? What other data points should be required by all issuers of ABS backed by equipment loans or leases? Please provide a detailed explanation of the reasons why or why not.
- Should we require data points on the obligor's ability to pay the equipment loan or lease? If so, please provide a detailed explanation of the types of data points and what code descriptions should be provided.
- Should we require a data point to disclose whether the equipment that serves as collateral is the subject of certain provisions of the U.S. Bankruptcy Code? For instance, section 1110 of the Bankruptcy Code[274] applies to financiers of aircraft, aircraft engines, and other defined equipment. If so, please provide a detailed explanation of what the data point should be and what code descriptions should be provided.
- We are proposing to require an indicator for equipment type. The code options for this indicator would be: (1) Construction; (2) Furniture and Fixtures; (3) General Office Equipment/Copiers; (4) Industrial; (5) Maritime; (6) Printing Presses; (7) Technology; (8) Telecommunications; (9) Transportation; and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for the obligor industry. The code options for this indicator would be: (1) Agriculture and Resources; (2) Communications and Utilities; (3) Construction; (4) Distribution/Wholesale; (5) Electronics; (6) Financial Services; (7) Forestry and Fishing; (8) Healthcare; (9) Manufacturing; (10) Mining; (11) Printing and Publishing; (12) Public Administration; (13) Retail; (14) Services; (15) Transportation; and (98) Other. Are these codes appropriate? Is code "(15) Transportation" too broad? If so, what codes would be more useful? Are there additional codes that should be included?
- We are proposing to require an indicator for the source of the equipment residual value. The code options for this indicator would be: (1) Internal; (2) External Consultant; and (3) Other. Are these codes appropriate? Are

[273] *See* Section III.A.1.b.

[274] 11 U.S.C. 1110.

there additional codes that should be included? Are there any published guides to equipment residual values?

(iii) Student Loans

We are proposing to require 28 additional data fields that relate to ABS backed by student loans. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 8.

1. Whether payments on the loan are subsidized through a federal program.
2. A code describing the repayment terms and the current number of years in repayment.
3. The name of any guarantee agency.
4. The date the loan was disbursed to the obligor.
5. Whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.
6. Geographic location of the obligor by Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.
7. A code describing the type of school or program. Code options for this data point would be continuing education, graduate, K–12, medical, or undergraduate.
8. If the loan was not issued under a federally funded program, the following additional disclosure would be required:
   a. The obligor and co-obligor's credit scores and credit score type;
   b. The obligor and co-obligor's wage and other income and a code that describes the level of verification;
   c. A code that describes the level of verification of assets of the obligor and co-obligor; and
   d. The obligor and co-obligor's length of employment and a code that describes the level of verification.

Request for Comment

- Are all of the student loan data points appropriate? What other data points should be required by all issuers of ABS backed by student loans? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for repayment type. The code options for this indicator would be: (1) Level; (2) Graduated Repayment; (3) Income-sensitive or (4) Interest Only Period. Are these codes appropriate? Are there additional codes that should be included?
- We are proposing to require an indicator for school type. The code options for this indicator would be: (1) Continuing Education; (2) Graduate; (3) K–12; (4) Medical; or (5) Undergraduate. Are these codes appropriate? Are there additional codes that should be included?

(iv) Floorplan Financings

Asset-backed securities may be backed by a pool of floorplan receivables. Floorplan receivables are used by wholesalers and retailers to finance purchases of inventory, for instance, an automobile dealership will finance purchases of the vehicles available for sale in its inventory. Floorplan receivables are usually revolving in nature and are commonly structured as revolving asset master trusts. Payment terms may vary, but usually payment is due when the underlying collateral is sold. Generally, when new inventory is purchased, a new receivable is created; therefore, we are proposing that the asset-level data be provided for each receivable, instead of each account.

We are proposing to require six additional data fields that relate to ABS backed by floorplan financings. With respect to each receivable in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 9.

1. The account origination date.
2. The type of inventory product line.
3. Whether the property financed is new or used.
4. Information related to the obligor such as geographic location by zip code, and credit score and type.
5. If the issuing entity is structured as a master trust that has previously issued securities, the information required by Items 1 and 9 of Schedule L–D for assets that were part of the asset pool prior to the current offering.[275]

Request for Comment

- Since floorplan financings are usually structured as master trusts, we are proposing to require asset-level data based on each receivable in the pool. Should the data be provided by account? Which is more appropriate and why?
- Are all of the proposed floorplan financing data points appropriate? What other data points should be required by all issuers of ABS backed by floorplan financings? Please provide a detailed explanation of the reasons why or why not.
- We are proposing to require an indicator for product line type. The code options for this indicator would be: (1) Accounts Receivable;[276] (2) Consumer Electronics and Appliances; (3) Industrial; (4) Lawn and Garden; (5) Manufactured Housing; (6) Marine; (7) Motorcycles; (8) Musical Instruments; (9) Power Sports; (10) Recreational Vehicles; (11) Technology; (12) Transportation and (98) Other. Are these codes appropriate? Are there additional codes that should be included?
- Is our proposal to require the information in Item 1 and Item 9 of Schedule L–D for pre-existing assets in master trusts appropriate?

(v) Corporate Debt

Asset-backed securities may be backed by corporate debt securities. Asset-backed securities backed by corporate debt securities are typically issued in smaller denominations than the underlying security and the ABS are registered under Section 12(b) of the Exchange Act for trading on an exchange. Additionally, a pooling and servicing agreement may also permit a servicer or trustee to invest cash collections in corporate debt instruments which may be securities under the Securities Act.[277] We are proposing nine additional data fields for ABS backed by corporate debt. We believe the data points in Item 1. General are appropriate because items such as origination date, maturity date, amortization term, etc. would also apply to corporate debt. A description of each proposed data point is provided in the Appendix to this release in Table 10.

1. Title of the underlying security or agreement, denomination, and currency.
2. The payment frequency of the security or agreement.
3. Whether the security or agreement is callable.

[275] We believe prior performance information of pre-existing assets would be useful for investor analysis of the asset pool. If the information was previously reported, issuers would be able to incorporate by reference the previously filed Form 10–D.

[276] With respect to accounts receivable, an originator generally makes loans that are secured by accounts receivable owed to the dealer, manufacturer, distributor or other commercial customer against which an extension of credit was made and, in limited cases, by other personal property, mortgages on real estate, assignments of certificates of deposit or letters of credit. The accounts receivable which are pledged to an originator as collateral may or may not be secured by collateral. In the case of a loan facility secured by accounts receivable, the lender usually has discretion as to whether to make advances to the borrower under that facility.

[277] An asset pool of an issuing entity includes all other instruments provided as credit enhancement or which support the underlying assets of the pool. If those instruments are securities under the Securities Act, they must be registered or exempt from registration if included in the asset pool as provided in Securities Act Rule 190, regardless of their concentration in the pool. *See* Securities Act Rule 190(a) and (b). *See also* Section III.A.6.a. of the 2004 ABS Adopting Release.

4. Name of trustee.

5. Underlying SEC file number and CIK number.

6. Whether the security is a zero-coupon, that is whether it bears interest by means of periodic payments or by means of purchase at a discount and full price repayment at maturity.

Request for Comment

• Should asset-level disclosure be required for ABS backed by corporate debt? Are all of the corporate debt data points appropriate? What other data points should be required by all issuers of ABS backed by corporate debt? Please provide a detailed explanation of the reasons why or why not.

• Should we require asset-level disclosure of credit enhancements related to the underlying security? If so, how would we define the data point(s) and the related responses?

(vi) Resecuritizations

In a resecuritization ABS, the asset pool is comprised of one or more asset-backed securities. We are proposing that issuers provide the same Schedule L data as required for corporate debt-backed securities, for each asset-backed security in the asset pool because the same information about the underlying asset-backed security, such as the title of the security, payment frequency, whether it is callable, the name of trustee and the underlying SEC file number and CIK number would be useful to an investor. In addition, we are proposing that issuers provide Schedule L data for assets underlying those securities.[278] For instance, in an offering where the asset pool is comprised of several RMBS, then the data points in Item 1 and Item 10 of Schedule L would be required for every RMBS security in the asset pool, as well as the data points in Item 1 and Item 2 for each loan underlying each RMBS security. Also, under current rules, if the assets that will be securitized are themselves securities under the Securities Act, the offering of those securities must be registered or exempt from registration under the Securities Act, and all disclosures for a registered offering is required.[279]

Request for Comment

• Is our proposal for resecuritizations appropriate? What other data points should be required by all issuers of that asset class? Please provide a detailed explanation of the reasons why or why not.

• Should we require disclosure of the ratings of the resecuritized securities in Schedule L?

• Should we require Schedule L data for the asset pool only, i.e. only the data points in Item 1 and Item 9 of Schedule L?

• Would issuers of the resecuritization ABS be able to obtain the asset-level data for the pool of assets underlying the resecuritized ABS? Should we phase in the requirement? We note that Project RESTART recommends that issuers provide the loan-level reporting package for outstanding RMBS,[280] although we note that the ASF recommendation may only serve to provide information similar to our proposed requirements for periodic reports, and may not include all the information required at the time of an offering.

2. Asset-Level Ongoing Reporting Requirements

In addition to asset-level information at the time of the offering, we are proposing to require asset-level performance information in a standardized format filed on EDGAR in periodic reports required under Sections 13 and 15(d) of the Exchange Act, including those required pursuant to the new undertaking to continue reporting described above. The proposed asset-level performance data in periodic reports would differ from information that would be required at the time of the offering. We believe that in periodic reports, some of the most important information focuses on whether an obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due, and the losses that may pass on to the investors.

Currently, issuers report performance information in periodic reports on an aggregate basis; however, we believe that it would be most useful for investors to receive information regarding whether an individual obligor is making payments as scheduled, the efforts by the servicer to collect amounts past due, and the loss that may pass on to the investors on an asset-level basis. That way, an investor may use the asset-level information to conduct his or her own valuation of the credit quality of a particular asset and its effect on the pool throughout the life of the investment. We also believe that regulators could find this information useful. Like asset-level data at the time of the offering, we are proposing to require asset-level performance data to be filed on EDGAR in XML in order to facilitate data analysis. The proposed disclosure requirements are contained in proposed Item 1121(d) and Schedule L–D.

As we discussed earlier, in to order facilitate comparison of information across securities, we believe that asset-level data should be standardized, and some organizations have already developed data points for ongoing reporting of information for registered and unregistered commercial mortgage-backed securities and residential mortgage-backed securities.[281] In our proposed periodic reporting requirements, we have utilized such standardization where feasible. Like our proposal for asset-level data at the time of the offering, our proposed periodic reporting requirements specify and define each item that must be disclosed for each asset in the pool. We are also proposing an instruction to Schedule L–D that will contain definitions for some of the terms that we use throughout the schedule. Attached at the end of this release we provide an appendix which contains a table of the proposed general item requirements as well as asset class specific item requirements. Each table lists the proposed item number, the title of the proposed data field, the proposed definition, the proposed response type and codes, if applicable, and proposed category of information. The proposed category of information designates the type of information we are proposing so that users will know when the data point is applicable.

Proposed Item 1121(d) and Schedule L–D disclosure would be required at the time of each Form 10–D. Periodic

[278] The waterfall computer program would also be required for each underlying security. *See* our proposed changes to Item 1113 (h) of Regulation AB discussed in Section III.B.1 below.

[279] Due to the exposure created in the underlying instrument through the asset-backed offering, under current rules, information related to any underlying instrument is required to be disclosed in accordance with offering disclosure requirements of current Forms S–1and S–3. For example, updated and current information includes updated pool data, static pool, risk factors, performance information, how the underlying securities were acquired, and whether and when the underlying securities experienced any trigger events or rating downgrades. As we stated in the 2004 ABS Adopting Release, not all items of disclosure required at the time of offering the resecuritization ABS are available through incorporation by reference of Exchange Act reports. *See* Section III.A.7. and footnote 193 of the 2004 ABS Adopting Release. Furthermore, under our proposal requiring one prospectus for each ABS offering, all of the information must be contained in the prospectus.

[280] *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 21, available at *http://www.americansecuritization.com/*.

[281] Materials related to the CRE Finance Council Investor Reporting Package are available at: *http://www.crefc.org/Industry_Standards/CMSA–Investor_Reporting_Package/CRE_Finance_Council_IRP/*. *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009), available at *http://www.americansecuritization.com/*.

reports on Form 10–D are required to be filed within 15 days after each required distribution date on the asset-backed securities, as specified in the governing documents for such securities.[282] If assets are added to the pool during the reporting period, either through prefunding periods, revolving periods or substitution, disclosure would be required under our proposed revisions to Item 6.05 on Form 8–K discussed in Section V.C.1. Similarly, the Schedule L data contained in proposed Item 1111A would need to be provided.

Request for Comment

- Are the definitions of terms in the proposed instruction to Schedule L appropriate? Are there any other terms that should be included in the instruction?
- Are the proposed coded responses contained in the attached tables appropriate? Does our approach to responses provide investors with meaningful disclosure while also addressing any privacy concerns? Please be specific in your response by commenting on specific proposed line items and codes.
- Is the proposed requirement to provide Schedule L–D data with Form 10–D appropriate? Should Schedule L–D data be required at any other time, such as daily or monthly for all asset classes? Please tell us why.

(a) Proposed Disclosure Requirements

We are proposing that the same asset classes, subject to the requirement to provide asset-level data at the time of the offering, would also be required to provide the standardized data points enumerated in Schedule L–D. Like the proposed asset-level information at the time of the offering, we are proposing that most issuers must provide the 46 data points listed under Item 1. General of Schedule L–D. We believe these data points are generic and consistent across asset classes, and should also apply to any new asset classes that may be included in a registered offering. In addition, we also propose asset class specific data points that will be discussed further below.

With respect to each asset in the pool, we are proposing to require the following disclosure with each Form 10–D. A description of the 46 data points is provided in Table 11 of the Appendix.

1. The unique asset number and a description of the type of number. The asset number and type of asset number should be the same values assigned at the time of the offering that would appear in Schedule L.
2. Whether the asset is designated to a particular collateral group.
3. The beginning and ending dates of the reporting period.
4. The actual total amount paid during the reporting period, the amount of interest collected, the amount of principal collected and other amounts collected.
5. Any other principal and interest adjustments.
6. The current asset balance and scheduled asset balance.
7. Amounts that were scheduled to be collected during the reporting period, which would be the scheduled payment amount, scheduled interest payment amount, and scheduled principal amount.
8. A code that describes the current delinquency status and current payment status.
9. A code that describes the payment history over the most recent 12 months.
10. The next due date, next interest rate and remaining term to maturity.
11. Information related to servicing which would be:
    a. The current servicer and the dollar amount of the fee earned by the current servicer for administering the loan for the reporting period;
    b. If the loan's servicing has been transferred, the effective date of the servicing transfer;
    c. Any amounts advanced by the servicer during the reporting period, and the cumulative outstanding amount;
    d. A code that describes the manner in which principal and/or interest are advanced by the servicer;
    e. The date a servicer stopped advancing payment; and
    f. Other fees earned by the servicer and other fees assessed by the servicer related to the asset.
12. Whether the asset terms have been modified.
13. Whether a notice to repurchase the asset has been received, whether the asset has been repurchased, the repurchase date, name of the repurchaser, and the reason for repurchase.
14. Whether the asset has been liquidated.
15. Whether the asset has been charged-off and the charged-off principal and interest amounts.
16. Whether the asset has been paid-off, and if so, whether any prepayment penalties were paid or waived. If waived, a code indicating the reason why.

Request for Comment

- Are the general data points appropriate for Form 10–D? What other data points would apply to all asset classes? Please provide a detailed explanation of the reasons why or why not.

(b) Proposed Exemptions

We are proposing to exclude ABS backed by credit cards, charge cards and stranded costs from the requirement to provide ongoing asset-level data in periodic reports. Like the proposed asset-level data at the time of the offering, because of the volume of accounts in a credit card or charge card securitization we believe that granular asset-level information would not be as useful to investors and would be very costly for issuers, depending on the level of automation of the issuer's information processing and delivery system. For these asset classes, we are proposing that issuers provide grouped account data that we discuss in Section III.A.3. below. As explained earlier, because transition property is not a receivable, nor a pool of receivables, we do not propose asset-level data be provided for stranded cost ABS for periodic reports.

Request for Comment

- Is there any asset-level data that should be provided in periodic reports by credit card, charge card or stranded cost issuers? If so, please explain why.
- Is there any pool-level data that should be provided in periodic reports by credit card, charge card, or stranded cost issuers? Should any pool-level data be standardized for these asset classes? If so, please explain why. For instance, we request comment above about whether we should require issuers of ABS backed by credit cards and charge cards to provide specific types of pool-level disclosure in a standardized manner at the time of an offering.[283] Should any of that pool-level information be required with each periodic report on Form 10–D? For instance, should we use the same distributional groups for account balance, account age, APR, credit available for purchase, types of products, and accounts under a debt management program?
- Are there any other asset classes that should be exempt from the asset-level disclosure requirement in periodic reports and why?

(c) Residential Mortgage-Backed Securities

We are proposing 151 data points for periodic reports for ABS backed by residential mortgages. Similar to the RMBS data points we are proposing for

[282] *See* General Instruction A.2 to Form 10–D.

[283] *See* Section III. A.1.b.iv. above.

Schedule L, much of the proposed data and definitions are based on fields developed by organizations doing work in the area of RMBS, as well as government agencies.[284] Many of the data points we are proposing relate to loan modifications and loss mitigation activities by the servicer. We describe the additional proposed data points below. A description of each proposed data point and related response is provided in Table 12 of the Appendix to this release.

1. Information related to delinquent loans, such as a code describing the reason for non-payment and codes describing the status of the non-payment;

2. If the loan is an adjustable rate mortgage, the rate at the next reset date, the next interest reset date, the payment at the next reset date, the next payment reset date, whether the loan is an option ARM, and whether the borrower exercised an option to convert an ARM loan to a fixed loan;

3. If the obligor has filed for bankruptcy:

a. The date of filing and case number;

b. The date on which the next payment is due under the terms of the bankruptcy plan;

c. If the bankruptcy has been released, the code that describes the reason for the release and the date of the release;

d. The actual due date of the loan had the bankruptcy not been filed; and

e. Whether the debt was reaffirmed and whether the trustee handles post-petition payments.

4. With respect to delinquent loans, whether the servicer is pursuing loss mitigation and the type of loss mitigation with the loan, borrower or property;

5. Information related to loan modifications:

a. The date of first payment due post modification;

b. The loan balance as of the modification effective payment date;

c. The amount added to the principal balance of the loan;

d. Pre- and post-modification interest rates;

e. Post-modification margin, which is the number of percentage points added to the index to establish the new rate;

f. Pre- and post-modification principal and interest scheduled payment amount;

g. Post-modification interest rate ceilings and floors;

h. Pre- and post-modification initial and subsequent limitations on interest rate increases and decreases;

i. Pre- and post-modification limitations on payment amount increases and decreases;

j. Pre- and post-modification maturity dates;

k. The number of months of the interest reset period, pre- and post-modification;

l. Updated debt-to-income ratios used to qualify the modification;

m. Pre- and post-modification interest only period;

n. Cumulative and current forgiven interest and principal amounts;

o. The due date on which the next payment adjustment is scheduled to occur for an ARM loan;

p. Whether the loan remains an ARM loan post-modification;

q. Whether the terms of the modification agreement call for the interest rate to step up over time, the maximum interest rate to which the loan may step up and the date the maximum interest rate will be reached;

r. Cumulative and current principal amount deferred by the modification that are not subject to interest accrual as well as any amounts collected from the obligor during the current period;

s. Cumulative and current interest and fees deferred by the modification that are not subject to interest accrual as well as any amounts collected from the obligor during the current period;

t. The total amount of expenses that have been waived or forgiven and reimbursable to the servicer;

u. The total amount of escrow and corporate advances made by the servicer at the time of the modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, and insurance, among others;

v. The total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the modification;

w. Whether the loan has been modified under the terms of the Home-Affordable Modification Plan (HAMP).[285] If so, information regarding participation end dates, amounts paid and payable under the program, whether the mortgage holder has or will receive the incentive amount under the program, and actual and scheduled balance of the loan plus any deferred amounts.

6. If a forbearance plan is in effect, the start date and end date of the plan. A forbearance plan is a period during which no payment or a payment amount less than the contractual obligation is required by the obligor;

7. If a repayment plan is in effect, the start and end date of the plan, and the date the obligor ceased complying with the terms of the plan. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current;

8. If the type of loss mitigation is Deed-In-Lieu, the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-In-Lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure;

9. If the type of loss mitigation is a short sale, the amount accepted for a short sale. Short sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale;

10. If the loan has exited loss mitigation efforts, whether the plan was completed or satisfied, cancelled or failed, or denied and the date of exit;

11. If the loan is in the foreclosure process:

a. The date the loan was referred to a foreclosure attorney and the date on which foreclosure action was taken;

b. The expected date of the foreclosure sale, the date set for the foreclosure sale by the court or the trustee, and the actual date it occurs;

c. A code that describes the reason for delay in the foreclosure process;

d. If state law provides for a period for confirmation, ratification, redemption or upset period, the date of the end of the period;

e. The amount bid by the servicer at the foreclosure sale;[286]

f. If the loan exited foreclosure, the date and the code that describes the reason the proceedings ended;

g. If the property was sold to a third-party, the sale amount of the property;

h. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, the date on which a court granted the judgment in favor of the creditor;

i. The date on which the publication of the trustee's sale information is published in the appropriate venue; and

[284] *See* Section III.A.1.c. above.

[285] HAMP is a federal loan modification program. Further details are available at *http://makinghomeaffordable.gov/* and *https://www.hmpadmin.com/portal/index.html.*

[286] The servicer will usually place an opening bid, on behalf of the issuing entity, at the foreclosure auction that is usually equal to the outstanding loan balance, interest accrued, and any additional fees and attorney fees associated with the trustee sale. If there are no bids higher than the opening bid, the property will be owned by the issuing entity and be considered real estate owned (REO). This typically would occur because the market value of the property is less than the total amount owed on the loan.

j. The date on which the servicer sent a notice of intent to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

12. If the property is now owned by the issuing entity due to an unsuccessful sale at the foreclosure auction, the asset is considered real estate owned (REO).[287] Information should be provided on the following:

a. The most recent listing date and price;

b. If an offer has been accepted, the amount and the date of acceptance;

c. The original list date and list price for the property;

d. If an REO sale has closed, the closing date, the gross proceeds, and the net proceeds;

e. The cumulative monthly and total loss amount passed on to the issuing entity;

f. Any amount recovered during the current period;

g. The start and end date of an eviction process, if applicable; and

h. If the loan exited REO during the current period, provide the date and a code describing the reason.

13. Information related to loss claims:

a. The unpaid principal balance at the time of liquidation;

b. Amounts advanced by the servicer and to be reimbursed such as interest, servicing fees, attorney fees, attorney costs, property taxes, property maintenance, insurance premiums, utility expenses, appraisal expenses, property inspections, any pre-securitization advances and other miscellaneous expenses;

c. If the loan is in REO, the amount of REO management fees;

d. The amount of the payment to the obligor or tenants in exchange for vacating the property; and

e. Any incentive payment to servicer for carrying out a deed-in-lieu or short sale.

14. Information related to loss recoveries:

a. The escrow balance and the suspense balance;

b. Proceeds collected from hazard claims, pool insurance, mortgage insurance, property tax refunds, and insurance premium refunds; and

c. The amount of any realized loss resulting from bankruptcy or special hazard.

15. If a mortgage insurance claim has been submitted to the primary mortgage insurance company for reimbursement, the following information would be required:

a. The date the claim was filed and the date it was paid;

b. The amount claimed and the amount paid;

c. The date the claim was denied or rescinded; and

d. If the property was conveyed to the insurance company, the date of conveyance.

Request for Comment

• Are all of the RMBS data points appropriate for periodic reports? What other data points should be required by all RMBS issuers? Are any data points not necessary or overly burdensome to obtain? Please provide a detailed explanation of the reasons why or why not. Some data points request the results of calculations, such as debt-to-income ratios. Can those data points be calculated from information already provided by the other asset-level data points? If so, can users of the information independently calculate these data points? Should we not require these data points to be included in the asset-level data file for periodic reports?

• Should we add a data point to require the amount of any loss as a result of intentional misstatement, misrepresentation, or omission by an applicant or other interested parties, relied on by a lender or underwriter to provide funding for, to purchase, or to insure a mortgage loan? If so, how would the issuer be able to verify the information? Is this information currently disclosed?

• Should we require updated information about the obligor, such as updated credit scoring information? If so, why? Would issuers be able to obtain updated credit scores?

• We are proposing several data points to capture activity specifically related to the HAMP program. Are more generic data points appropriate that would capture activity if other types of government programs are or become available? If so, please provide us with the data points that would be more appropriate and the related definition.

• We are proposing, in the case of a foreclosure, that registrants provide the expected date of the foreclosure sale, the date on which the foreclosure sale has been set by the court or the trustee, and the date on which the foreclosure sale occurs. Are all three data points necessary?

• We are proposing, in the case of a delayed foreclosure, that registrants provide a code describing the reason for the delay. Should we specify the number of days that would constitute a delay for this item requirement? If so, what would be the appropriate number of days and why?

(d) Commercial Mortgage-Backed Securities

We are proposing to require 47 additional data points for periodic reports that relate to commercial mortgages. Similar to the proposed Schedule L data points for commercial mortgage-backed securities, the data points we are proposing to require below are primarily based on the definitions provided by the CMSA. With respect to each commercial mortgage loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in Table 13 to the Appendix to this release.

1. The remaining term, number of properties that collateralize the loan and the current hyper-amortizing date. The hyper-amortizing date is the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest to the mortgagor increases substantially.

2. If the loan is an adjustable rate mortgage, the rate at the next reset date, the next date the rate is scheduled to change, the amount of the payment at next reset, and next payment change date.

3. If the loan permits negative amortization, the cumulative deferred interest, and deferred interest collected.

4. A code describing any workout strategy.

5. Information related to modifications, such as the date of the last modification, a code that describes the type of loan modification, the new modified note rate, payment amount, maturity date and amortization period.

6. Information related to each property such as property name, geographic location, as represented by zip code, property type, net rentable square footage, number of units, year built, valuation amounts, physical occupancy, property status and a code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.

7. Financial information related to the properties including:

a. Financial reporting beginning and end dates;

b. Revenues, operating expenses, net operating income, and net cash flow;

c. A code describing how net operating income and net cash flow were calculated; and

d. The ratio of underwritten net operating income to debt service, the ratio of underwritten net cash flow to

[287] Servicing agreements will usually require the servicer to promptly sell the property.

debt service and a code describing how the ratio was calculated.[288]

Request for Comment

• Are all of the CMBS data points for periodic reports appropriate? What other data points should be required by all CMBS issuers? Please provide a detailed explanation of the reasons why or why not.

• Should we require more data points relating to foreclosure in CMBS, like we propose for RMBS? If so, please be specific as to which data points should be required and why.

• We are proposing data points for information related to the properties collateralizing each asset in Item 3(d) of Schedule L–D because we note that issuers that currently provide the disclosure in accordance with the CMSA Investor Reporting Package provide property information on a periodic basis. Some of this information is the same disclosure that would have been provided at the time of the offering by proposed Schedule L. Is it appropriate to include all of the data points in proposed Item 3(d) with each Form 10–D filing? In particular, is it useful for investors to receive the Item 3(d)(1) Property name, Item 3(d)(2) Property geographic location, Item 3(d)(3) Property type and Item 3(d)(6) Year built with each Form 10–D filing? Please tell us why or why not.

(e) Other Asset Classes

As discussed above, because we are unaware of any other organizations attempting to standardize data points for asset classes other than mortgages, we are proposing data points for periodic reports derived from the aggregate pool-level disclosure that is already provided in periodic reports for the following asset classes: Automobile loans and leases; equipment loans and leases; student loans; and resecuritizations. We do not propose any asset specific data points related to repackagings of corporate debt for periodic reports. We believe the data points required under proposed Item 1. General of Schedule L–D will provide the appropriate asset-level performance disclosure for those assets to investors.

Request for Comment

• Should we propose asset specific data points related to repackaging of corporate debt for periodic reports? If so, what would those be and what would be the appropriate form of disclosure?

(i) Automobiles

We are proposing to require five additional data fields for periodic reports that relate to ABS backed by automobiles loans and nine for ABS backed by automobile leases. With respect to each loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 14 for automobile loans and Table 15 for automobile leases.

1. Whether a form of subsidy is received on the loan, such as an incentive or rebate.

2. Any recovery of amounts previously charged-off.

3. Whether the vehicle was repossessed and related proceeds and fees.

4. For automobile leases, the updated residual value, source of residual value, whether the lease has been terminated and the reason why, any excess wear and tear or mileage charges, sales proceeds of the vehicle, or extension of lease term.

Request for Comment

• Are all of the automobile data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by automobile loans or leases? Please provide a detailed explanation of the reasons why or why not.

• We are proposing to require an indicator for the reason for automobile lease termination. The code options for this indicator would be: (1) Scheduled termination; (2) Early termination due to bankruptcy; (3) Involuntary repossession; (4) Voluntary repossession; (5) Insurance payoff; (6) Customer payoff; (7) Dealer purchase; and (8) Other. Are these codes appropriate? Are there additional codes that should be included?

(ii) Equipment

We are proposing to require two additional data fields for periodic reports that relate to ABS backed by equipment loans and five that relate to equipment leases. With respect to each loan or lease in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 16 for equipment loans and Table 17 for equipment leases.

1. Liquidation proceeds and any recovery of amounts previously charged-off; and

2. For equipment leases, the updated residual value, source of residual value, and whether the lease has been terminated and the reason why.

Request for Comment

• Are all of the equipment data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by equipment loans or leases? Please provide a detailed explanation of the reasons why or why not.

• We are proposing to require an indicator for the reason for equipment lease termination. The code options for this indicator would be: (1) Scheduled termination; (2) Early termination due to bankruptcy; (3) Involuntary repossession; (4) Voluntary repossession; (5) Insurance payoff; (6) Customer payoff; (7) Dealer purchase and (98) Other. Are these codes appropriate? Are there additional codes that should be included?

(iii) Student Loans

We are proposing to require six additional data fields for periodic reports that relate to ABS backed by student loans. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 18.

1. A code that describes the current obligor payment status.

2. The amount of capitalized interest during the reporting period.

3. If there is activity related to any guarantor during the reporting period, principal and interest received from the guarantor, whether a claim is in process and the outcome of the claim.

Request for Comment

• Are all of the student loan data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by student loans? Please provide a detailed explanation of the reasons why or why not.

(iv) Floorplan Financings

We are proposing to require five additional data fields for periodic reports that relate to ABS backed by floorplan financings. With respect to each loan in the pool, the issuer would be required to disclose the information described below. A description of each proposed data point is provided in the Appendix to the release in Table 19.

1. The liquidation proceeds and any recovery of amounts previously charged-off.

2. Updated credit score and type.

[288] For this purpose, "underwritten" means the adjusted amount based on a number of assumptions made by the mortgage originator or seller. We believe issuers will have had to include narrative disclosure about the assumptions used in the prospectus for the transaction.

Request for Comment

• Are all of the proposed floorplan financing data points appropriate for periodic reports? What other data points should be required by all issuers of ABS backed by floorplan financings? Please provide a detailed explanation of the reasons why or why not.

(v) Resecuritizations

As discussed earlier, at the time of the offering, we are proposing to require underlying asset-level data disclosure for resecuritization ABS.[289] Therefore, for periodic reporting, in addition to the asset-level data that would be required of the underlying securities as outlined in Item 1. General of Schedule L–D, we also propose that issuers of resecuritization ABS provide Schedule L–D data for the asset pool of the underlying securities. For example, if the ABS is comprised of several RMBS, then the data points in Item 1 of Schedule L–D would be required with respect to each RMBS security in the asset pool. In addition, the data points in Items 1 and 2 of Schedule L–D would be required for each loan underlying each RMBS security.[290] If the issuer of the underlying security suspends its reporting obligation and stops reporting, the issuer of the resecuritization ABS would still have to provide the required Schedule L–D data for each loan underlying each RMBS security because we believe that investors in the resecuritization ABS would need the underlying asset-level information to evaluate the performance of the resecuritization ABS.

Request for Comment

• Is our proposal for asset-level reporting for resecuritizations appropriate?

• Would issuers of the resecuritization ABS be able to obtain the asset-level data for the pool of assets underlying the resecuritized ABS? Should we phase in the requirement? We note that Project RESTART recommends that issuers provide the loan-level reporting package for outstanding RMBS.[291]

3. Grouped Account Data for Credit Card Pools

As we discussed above, we are proposing to exclude ABS backed by credit cards[292] from the requirement to provide asset-level data because we believe that level of information would result in an overwhelming volume of data that may not be useful to investors and providing the data may be cost-prohibitive for issuers. However, as we also noted above, we believe that investors and market participants should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction. Instead of providing asset-level data, we are proposing that issuers of ABS backed by credit cards provide disclosure more granular than pool-level disclosure by creating "grouped account data." As we explain in more detail below, grouped account data would be created by compressing the underlying asset-level data into combinations of standardized distributional groups using asset-level characteristics and providing specified data about these groups. Like our proposals for other asset classes discussed above, we are proposing to require the grouped account data be provided in XML and filed as an Asset Data File in order to facilitate data analysis.[293] Our proposal for grouped account data would be in addition to the disclosure currently required about the composition and characteristics of the pool of assets taken as a whole.

Request for Comment

• Is our proposal to require grouped account data disclosure with standardized groupings appropriate?

• Do investors in ABS backed by credit cards need enhanced information about assets, or are our current disclosure requirements sufficient?

• Is our proposal to require grouped account data in XML appropriate? Why or why not?

(a) When Credit Card Pool Information Would Be Required

Today we are proposing new Item 1111(i) and Schedule CC of Regulation AB that describe the standardized distributional groups and the information that would be provided for each group. Consistent with the proposed asset-level disclosure requirements for other asset classes, Schedule CC data would be an integral part of the prospectus, and in order to facilitate investor analysis prior to the time of sale, we are proposing to require issuers to provide Schedule CC data as of a recent practicable date that we define as the "measurement date" at the time of a Rule 424(h) prospectus and at the time of the final prospectus under Rule 424(b). Likewise, if issuers are required to report changes to the pool under Item 6.05 of Form 8–K, updated Schedule CC data would be required.[294] Updated Schedule CC would also be required if an issuer is required to report changes to the waterfall under proposed Item 6.07 to Form 8–K.[295] As we discuss in Section III.A.4, we are proposing a new Item 6.06 to Form 8–K for issuers to file the XML data file.

In addition, because credit card ABS are typically structured as master trusts, accounts may be added or withdrawn.[296] Unlike amortizing asset pools, the composition of the underlying asset pool varies over time and we believe investors and market participants would benefit from receiving information about the underlying asset pool as the pool evolves. Therefore, we are proposing that an updated Schedule CC be filed with each periodic report on Form 10–D.

Request for Comment

• Is the proposed requirement to provide Schedule CC data with the proposed Rule 424(h) prospectus, the final prospectus under 424(b) and for changes under Item 6.05 of Form 8–K appropriate?

• Is the proposed measurement date appropriate? Should we provide further guidance about what would be a recent practicable date for purposes of determining the measurement date? For example, should we specify that it be prepared as of a date that is five business days prior to filing?

• Would the proposed Schedule CC contained in the most recent Form 10–D provide investors with sufficiently current information at the time of making an investment decision? In this regard, we note the result could be that the most recent Schedule CC data could be as old as 45 days.

• Is our proposal to require that updated Schedule CC data be provided with Form 10–D appropriate? Should Schedule CC data be required at any other time, such as daily, weekly or

[289] Where the underlying securities were required to be registered pursuant to Rule 190 [17 CFR 230.190], the issuer of those underlying securities is subject to the requirements of Section 13(a) or 15(d) of the Exchange Act, as applicable.

[290] However, asset-level data would not be required if the asset class is exempt from the requirements of Item 1121(d) of Regulation AB. For instance, if the asset pool is comprised of stranded cost ABS, then Schedule L–D for the underlying pool would not be required because they are exempt from the requirements of Item 1121(d).

[291] *See* American Securitization Forum RMBS Disclosure and Reporting Package Final Release (July 15, 2009) at 21, available at *http://www.americansecuritization.com/*.

[292] For purposes of this discussion, we refer to both credit card and charge cards as "credit cards."

[293] *See* Section III.A.4.

[294] Under our proposed revisions to Item 6.05 of Form 8–K, a narrative description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool, would be included in the body of the report.

[295] *See* Section III.B. below.

[296] *See* fn. 177 above and accompanying text.

monthly? If so, please tell us when and why.

• Is our proposal to require that updated Schedule CC data be provided when changes to the waterfall are reported under proposed Item 6.07 appropriate? Please tell us why or why not.

(b) Proposed Disclosure Requirements

We are proposing that issuers group the underlying pool into grouped account data lines. Proposed Schedule CC sets forth the standardized groups and the information requirements that would be required for credit card pools. Grouped account data lines are created by grouping the underlying accounts by several characteristics. We further designate the groupings for each characteristic. This way, investors may receive more granular information about the underlying asset pool in order to perform better analysis of future payments on the asset-backed securities.[297]

We are proposing that data be grouped by a combination of the following characteristics:

1. Credit score. If the credit score used is FICO, the proposed groupings would be: (1) Less than 500; (2) 500–549; (3) 550–599; (4) 600–649; (5) 650–699; (6) 700–749; (7) 750–799; (8) 800 and over; and (9) unknown. We are proposing that issuers provide the most recent credit score available and accompanying disclosure would be required to explain the age of the credit score or the policy for updating the credit score from the time of account origination.[298] If the credit score used is not FICO, an issuer would designate similar groupings and provide explanatory disclosure. We are proposing a group of "unknown;" however, as we discuss above, registrants should be mindful of their responsibilities to provide all of the disclosures required in the prospectus and other reports.[299]

2. Number of Days Past Due. The proposed groupings would be accounts that are: (1) Current; (2) less than 30 days; (3) 30–59 days; (4) 60–89 days; (5) 90–119 days; (6) 120–149 days; (7) 150–179 days; and (8) 180 days and over.[300]

3. Account age. The proposed groupings would be accounts that are: (1) Less than 12 months; (2) 12 to 24 months; (3) 24 to 36 months; (4) 36 to 48 months; (5) 48 to 60 months; and (6) over 60 months.

4. State. The proposed groupings would be the top 10 states for aggregate account balance. The remaining accounts would be grouped into the category "other."

5. Adjustable rate index. The proposed groupings for the adjustable rate indexes would be: (1) Fixed; (2) prime; and (3) other.

In order to create a grouped account data line, each group based on each of these characteristics should be combined with all groups for all other characteristics. All possible combinations would result in 14,256 grouped account data lines. The table below illustrates how the distributional groups and the information requirements relate to each other. For example, grouped account data line 2 in the table below presents the information required by columns (b)(1) through (b)(5) by combining all the credit card accounts in the underlying pool that fall within the 500–549 credit score group (column (a)(1)), payments are less than 30 days past due (column (a)(2)), account age of 12 to 24 months (column (a)(3)), with obligors located in the state of Alabama (column (a)(4)), where the adjustable rate index is based on a floating percentage (column (a)(5)). For each grouped account data line, we are proposing that issuers provide the following information: The aggregate credit limit; aggregate account balance; number of accounts; weighted average annual percentage rate; and weighted average net annual percentage rate.[301]

Grouped account data line number	Credit score (a)(1)	Days payment is past due (a)(2)	Account age (a)(3)	Top 10 State (a)(4)	Adjustable rate index (a)(5)	Aggregate credit limit ($) (b)(1)	Aggregate account balance ($) (b)(2)	Number of accounts (#) (b)(3)	Weighted average APR (%) (b)(4)	Weighted average net APR (%) (b)(5)
1	less than 500	Current	Less than 12 months.	AK	Fixed.					
2	500–549	< 30 days	12–24 months	AL	Prime.					
3	550–599	30–59 days	24–36 months	AR	Other.					
4	600–649	60–89 days	36–48 months	AZ	Fixed.					
5	650–699	90–119 days	48–60 months	CA	Prime.					
6	700–749	120–149 days	Over 60 months	CO	Other.					
7	750–799	150–179 days	Less than 12 months.	CT	Fixed.					
8	800 and over	180+ days	12–24 months	DE	Prime.					
9	less than 500	< 30 days	24–36 months	DC	Other.					
10	500–549	30–59 days	36–48 months	FL	Fixed.					
11	550–599	60–89 days	48–60 months	Other	Prime.					
12	600–649	90–119 days	Over 60 months	AK	Other.					
13	650–699	120–149 days	Less than 12 months.	AL	Fixed.					
14	700–749	150–179 days	12–24 months	AR	Prime.					
15	750–799	180+ days	24–36 months	AZ	Other.					
16	800 and over	Current	36–48 months	CA	Fixed.					

Request for Comment

• Are the proposed standardized distributional groups appropriate? Are there any other distributional groups that we should specify? Are there any that should not be required?

• Would credit card ABS issuers be able to provide this information in this

[297] We base our groupings on a comment letter received from an investor in response to the FDIC Securitization Proposal. *See* fn. 257 above.

[298] See further discussion regarding explanatory disclosure for asset data files in Section III.A.4. and proposed Item 6.06(b) to Form 8–K.

[299] *See* Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b–21 [17 CFR 240.12b–21].

[300] *See* fn. 260 above. As we discuss above, our rules do not currently provide a definition of delinquent because of various delinquency policies across issuers. Instead of proposing to define delinquency, we believe disclosure of the number of days past due allows for analysis and comparability of the data.

[301] The weighted average net annual percentage rate would be the weighted average of the annual percentage rate less any servicing fees related to the account.

format on a cost-effective basis? Would it raise competitive concerns?

• We understand that most credit card ABS issuers currently provide disclosure about the FICO credit score distribution of the underlying pool. Rather than allowing the issuer to use a credit score that is not FICO, should we require that all issuers provide disclosure of FICO credit scores by distributional groups? Are there other types of credit scores with respect to which we should require disclosure by distributional group? If so, what would be the appropriate distributional groups?

• Should we provide a definition for delinquency? If so, how should it be defined?

• Are the distributional groups for adjustable rate index appropriate? Are there any other commonly used indexes that we should specify?

• Would issuers already have information about all of the states in order to prepare the groupings for the top 10 states by aggregate account balance and other? If so, should we require that issuers provide groupings by every state? Please tell us why or why not.

• Are the proposed informational requirements appropriate for the grouped account data (*i.e.,* aggregate credit limit, aggregate account balance, number of accounts, weighted average APR and weighted average net APR)? What other types of information should issuers provide about their accounts in the grouped account data format?

• Are credit cards ever securitized using structures that are not master trusts? If so, should we require asset-level disclosure for non-master trust credit card ABS issuers because the pool would be fixed and contain a smaller number of accounts?

4. Asset Data File and XML

We are proposing to require asset-level information [302] and grouped account data (with respect to credit cards) related to an offering and ongoing periodic reporting be filed on EDGAR in XML (extensible Markup Language) as an asset data file. By proposing to require the asset-level data file in XML, a machine-readable language, we anticipate that users of the data will be able to download the disclosure directly into spreadsheets and databases, analyze it using commercial off-the-shelf software, or use it within their own models in other software formats.

Asset-backed filers currently are required to file their registration statements, current and periodic reports in ASCII (American Standard Code for Information Interchange) or HTML (HyperText Markup Language).[303] Our electronic filing system also uses other formats for reporting related to corporate issuers, such as XML, to process reports of beneficial ownership of equity securities on Forms 3, 4, and 5 under Section 16(a) of the Exchange Act,[304] and a form of XML known as XBRL to provide financial statement data.[305] As we explained in the XBRL Adopting Release, electronic formats such as HTML and XML are open standards [306] that define or "tag" data using standard definitions. The tags establish a consistent structure of identity and context. This consistent structure can be recognized and processed by a variety of different software applications. In the case of HTML, the standardized tags enable Web browsers to present Web sites' embedded text and information in a predictable format so that they are human readable. In the case of XML and XBRL, software applications, such as databases, financial reporting systems, and spreadsheets recognize and process tagged information. For asset-backed issuers, we believe that XML is the appropriate format to provide standardized asset data disclosure. As we discuss earlier, some issuers already file loan schedules on EDGAR as part of the pooling and servicing exhibit or a free writing prospectus. However, the data is currently filed on EDGAR in ASCII or HTML, both of which do not facilitate data analysis. XBRL allows issuers to capture the rich complexity of financial information presented in accordance with U.S. GAAP.[307] In contrast, the proposed asset data file will present relatively simpler characteristics of the underlying loan, obligor, underwriting criteria and collateral among other items that are well suited for XML. We are proposing XML, rather than XBRL, because there are many commercial products that can be used with XML including parsers that would allow investors to insert data into a relational database for analysis, data extensions available in XBRL are not applicable to this data set, the nature of the repetitive data lends itself to an XML format and the schema could be easily updated.

We understand that most of this information is data collected at the time of origination and ongoing performance information is maintained on servicing systems. The CRE Finance Council (formerly CMSA) is already moving towards requiring issuers to provide its Investor Reporting Package in XML.[308] The use of XML will enable investors to use standard commercial off-the-shelf software for analysis of underlying loan-level data.[309] This software may also permit investors to insert the data into a database to identify individual data points. Then the data can be aggregated, compared and analyzed. Data can also be subjected to further waterfall analysis. Since XML data can be visualized in internet browsers, investors can develop a style sheet if viewing data is important in their analysis.[310]

Prior to requiring the asset data file in XML, technical specifications that describe the schema, which would include each data point described in Schedules L, L–D, and CC are necessary.[311] Also, extension data would not be permitted in the asset-level data file because we believe it would defeat the purpose of standardizing the data elements.[312] Instead, we are proposing to include a limited number of "blank" data tags in

[302] As defined in proposed Schedule L [17 CFR 229.1111A] and Schedule L–D [17 CFR 229.1121A].

[303] Rule 301 under Regulation S–T [17 CFR 232.301] requires electronic filings to comply with the EDGAR Filer Manual, and Section 5.1 of the Filer Manual requires that electronic filings be in ASCII or HTML format. Rule 104 under Regulation S–T [17 CFR 232.104] permits filers to submit voluntarily as an adjunct to their official filings in ASCII or HTML unofficial PDF copies of filed documents.

[304] 15 U.S.C. 78p(a).

[305] *See Interactive Data to Improve Financial Reporting,* Release No. 33–9002 (Feb. 10, 2009) ("the XBRL Adopting Release)

[306] The term "open standard" is generally applied to technological specifications that are widely available to the public, royalty-free, at minimal or no cost.

[307] As part of its process of developing proposed Accounting Standards Updates, the FASB identifies and seeks comment on proposed changes to tags in the U.S. GAAP XBRL Taxonomy. When the FASB publishes final Accounting Standards Updates, it includes in the final document proposed changes to the U.S. GAAP XBRL taxonomy as a result of the amendments in the Accounting Standards Update being issued. FASB Accounting Standards Updates, which include proposed updates to the U.S. GAAP XBRL taxonomy and are used to update the FASB Accounting Standards Codification. The FASB Accounting Standards Codification is available at *www.fasb.org.*

[308] *See* CRE Finance Council Investor Reporting Package X Version 6.0 Working Exposure Draft #1" available at *http://www.crefc.org/Industry_Standards/CMSA-Investor_Reporting_Package/CRE_Finance_Council_IRP/.*

[309] Off-the-shelf software includes computer products that are ready-made and available for sale, lease, or license to the general public.

[310] A style sheet is a text file that provides instructions for formatting and displaying the information in XML documents in a human-readable format.

[311] A schema is a set of custom tags and attributes that defines the tagging structure for an XML document.

[312] Extension data would allow issuers to add their own data elements to our defined data elements.

our XML schema. In order to reduce complexity for users we are proposing to limit the number to ten blank data tags. These blank data tags would give issuers the ability to present additional asset-level data not required by proposed Schedule L or L–D. For example, if servicers were required to comply with a new modification program, and related tagged information would be material to investors, it may be appropriate to use a blank data tag. Additionally, if an issuer registers ABS backed by an asset class that has not been previously registered, so that no asset class specific schema exists at the time, that issuer could use the available blank data tags. Issuers, however, would need to provide a narrative explanation of the definitions or formulas for the additional tagged data and file it as another exhibit on Form 8–K or Form 10–D.[313] Issuers could also file other explanatory disclosure regarding the asset-level data in an exhibit, if necessary.[314]

(a) Filing the Asset Data File and EDGAR

We are proposing that the new asset data file in XML be filed as an exhibit to the filings. Therefore, we are proposing changes to Item 601 of Regulation S–K, Rules 11, 201, and 202 of Regulation S–T and Form 8–K to accommodate the filing of asset data files. We are proposing to define the XML file required by proposed Schedules L, L–D, and CC as an "Asset Data File" in Regulation S–T and make corresponding changes to Rule 101 of Regulation S–T mandating electronic submission.[315] As we discuss above, we are proposing that the asset data be filed as an exhibit to the appropriate Form 8–K (in the case of an offering) or to the appropriate Form 10–D (in the case of a periodic distribution report).[316] As we note above, we realize that registrants may want to provide investors with additional asset information not defined in Schedule L or L–D, or that issuers of new asset classes may want to provide investors with other data points. As such, we also propose an additional exhibit, an asset related document, for registrants to disclose the definitions or formulas for the additional data points or to provide further explanatory disclosure regarding the asset data file.[317]

We also propose to add Item 6.06 to Form 8–K. Regardless of whether the issuer is registering the offering on Form SF–1 or SF–3, we are proposing to require all asset data files to be filed on Form 8–K so that investors may easily locate asset-level data disclosure on EDGAR. The proposed item explains that the asset data file must be filed with the Form 8–K on the same date of the filing of a prospectus filed in accordance with proposed Rule 424(h), a final prospectus meeting the requirements of section 10(a) of the Securities Act filed in accordance with Rule 424(b), and a report filed in accordance with Item 6.05 of Form 8–K (Securities Act Updating Disclosure). The proposed item also requires that any asset data related document[318] be filed at the same time the asset data file is filed on EDGAR. We have also included proposed instructions to Item 6.06 to refer to the proposed exhibit requirements in Item 601 of Regulation S–K and to the incorporation by reference item requirements on proposed Forms SF–1 and SF–3.

(b) Hardship Exemptions

We are proposing a self-executing temporary hardship exemption for filing the asset data file; however, we are proposing to exclude the asset data file from the continuing hardship exemption. Rule 201 under Regulation S–T generally provides for a temporary hardship exemption from electronic submission of information, without staff or Commission action, when a filer experiences unanticipated technical difficulties that prevent timely preparation and submission of an electronic filing. The temporary hardship exemption permits the filer to initially submit the information in paper, but requires the filer to submit a confirming electronic copy of the information within six business days of filing the information in paper.[319] Failure to file the confirming electronic copy by the end of that period results in short form ineligibility. Because the disclosure requirement for an asset data file is inherently electronic, and the information would not be useful if provided in paper, we are proposing an alternative approach to the temporary hardship exemption. Under our proposal, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of an asset data file, a registrant will still be considered timely if the asset data is posted on a Web site on the same day it was due to be filed on EDGAR, the Web site address is specified in the required exhibit, a legend is provided in the appropriate exhibit claiming the hardship exemption, and the asset data file is filed on EDGAR within six business days. We believe that posting the asset data on a Web site is preferable to a paper filing in this circumstance. By requiring the asset data file posting on a Web site, investors would have access to the disclosures and would not experience any delay in accessing the asset data in XML format. Consistent with our current temporary accommodation rules, under our proposed accommodation, the asset data file must be filed on EDGAR within six business days and failure to file the asset data file within that period will result in the loss of Form SF–3 eligibility. We believe it is important that the disclosure be filed with the Commission on EDGAR to preserve continuous access to the information. As we discuss below, our experience with the temporary accommodation for static pool disclosure raises concern that access to the information on Web sites may be lost due to the distress in the market or the fact that certain sponsors may cease operations.[320]

We are proposing to exclude asset data files from the continuing hardship exemption under Rule 202 of Regulation S–T. Rule 202 generally allows a registrant to apply for a continuing hardship if it cannot file all or part of a filing without undue burden or expense. In contrast to the self-executing temporary hardship exemption process, a filer may obtain a continuing hardship exemption only by submitting a written application, upon which the Commission staff must then act under delegated authority.

We do not believe a continuing hardship exemption is appropriate with respect to an asset data file because we believe the proposed asset data file would be an integral part of the prospectus and periodic performance reporting. We believe that, for ABS issuers, the information in machine readable format is generally already collected and stored on a servicer's systems. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the asset data file. We believe investors should receive all of the disclosures specified in Schedules L

[313] *See* proposed Item 601(b)(103)(i) of Regulation S–K.

[314] *See* proposed Item 601(b)(103)(ii) of Regulation S–K.

[315] *See* proposed definition to Rule 11 of Regulation S–T.

[316] *See* proposed exhibit table in Item 601(a) of Regulation S–K.

[317] *See* proposed Item 601(b)(103) of Regulation S–K.

[318] *Id.*

[319] *See* Rule 201 of Regulation S–T [17 CFR 232.201].

[320] *See* Section III.E.4.

and L–D and in a format that will allow them to effectively utilize the information.[321]

(c) Technical Specifications

We are proposing to add detailed information on submitting an asset data file to the EDGAR Technical Specification. As discussed above and as specified in the Appendix to this release, there are several data points contained in Schedule L and Schedule L–D that require issuers to provide a coded response. These codes would be enumerated in the EDGAR Technical Specification. We expect that the technical specifications would be available as early as possible prior to any required compliance date. The manual would be published on the SEC's Web site on the "Information for EDGAR Filers" webpage.[322]

Request for Comment

- Is it appropriate to require the asset data file in XML format? Does XML format most easily facilitate the analysis of the securities and their underlying assets for all market participants?
- In what format do issuers currently provide asset data information to investors (as may be required, for example, under transaction agreements)? Do any market participants currently provide asset data in accordance with a technical specification or schema commonly used across a particular asset class? If so, would our data points cause divergence from current practice? Please tell us which specific proposed data points would be of concern and why. How can we address those concerns? Is another format preferable, such as XBRL?
- Should we adopt the proposed changes to Item 601 of Regulation S–K, Regulation S–T and Form 8–K?
- We are not proposing changes to Rule 305 of Regulation S–T to exempt the asset data file from the restrictions on the number of characters per line that may be filed on EDGAR in order to prevent issuers from filing the tagged data in one continuous string. We believe the restriction on the number of characters per line will help preparers and validators with their review of the asset data file. Should we exempt the asset data file from Rule 305 of Regulation S–T? If so, why?
- Are the proposed blank data tags appropriate? Is ten blank data tags the appropriate number? Should the number be more or less? Would more blank data tags create undue complexity for investors? Are there other ways we could provide for additional disclosure and have that disclosure be standardized?
- Is the proposed temporary hardship exemption, including the required Web site posting, appropriate? Should we allow a continuing hardship exemption for filing the asset data file on EDGAR?
- We propose to use existing submission types in order to enable filers to attach the asset data file as an exhibit. Tagging specifications that explain the requirements of the XML schema would be included in the proposed technical specifications. Are there other specifications that would be helpful that should be provided in the EDGAR Filer Manual for asset data files that are not currently included in other Technical Specifications? Please be specific in your response.
- Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response.
- The technical specification will outline in detail the required format of each data point. Are there other validation checks that need to be in place to check compliance? Please be specific in your response.

4. Pool-Level Information

By at least 2006, an increasing number of residential mortgages were generated in the United States through loosened underwriting standards.[323] In addition, originators engaged in practices such as the bundling of non-traditional features into a single loan product, known as "risk-layering."[324] The loosening of underwriting standards for subprime mortgages has been cited as one of the principal causes of the recent turmoil in the financial markets.[325] In addition, compliance with the disclosure guidelines set forth in our rules by some ABS issuers was not consistent.

Item 1111 of Regulation AB[326] outlines several aspects of the pool that the prospectus disclosure should cover.[327] Item 1111 explicitly provides that exceptions to origination criteria must be disclosed.[328] We are proposing revisions to the pool-level disclosure requirements in Item 1111 to further detail and clarify the type of disclosure that is required to be provided for ABS offerings with respect to deviations from disclosed underwriting standards. We also are proposing revisions related to the originator's diligence with respect to the information used to underwrite the assets, and the remedies related to the pool assets that are available to investors that are provided in underlying transaction agreements.

First, we are proposing to amend Item 1111 to specify that disclosure regarding the underwriting of assets that deviate from the disclosed origination standards must be accompanied by specific data about the amount and characteristics of those assets that did not meet the disclosed standards. To the extent that disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, the issuer would be required to specify the factors that were used and provide data on the amount of assets in the pool that are represented as meeting those factors. Thus, data would be required on the number of assets not meeting the underwriting criteria, the number of such assets meeting particular compensating factors (if those factors are disclosed), and the number of such assets not meeting such factors.

[321] We recognize that our rules provide for a continuing hardship for registrants required to file Interactive Data Files in XBRL. Interactive Data Files in XBRL contain data that is already disclosed in the prospectus. In contrast, asset data files will contain disclosure that is not otherwise provided in the related prospectus or report. *See* the XBRL Adopting Release.

[322] The Web site address is *http://www.sec.gov/info/edgar.shtml.*

[323] The PWG March 2008 Report states that there was a dramatic weakening of underwriting standards for U.S. subprime mortgages, beginning in late 2004 and extending into early 2007.

[324] For a discussion of the increase in looser underwriting standards and risk layering practices, *see, e.g.,* Speech by Federal Reserve Chairman Ben S. Bernanke At the Federal Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure and Competition, Chicago, Illinois, available at *http://www.federalreserve.gov/newsevents/speech/bernanke20070517a.htm;* Report by the Global Joint Initiative of Securities Industry and Financial Markets Association, the American Securitization Forum, the European Securitisation Forum, and the Australian Securitisation Forum, "Restoring Confidence in the Securitization Markets," (Global Joint Initiative Report) Dec. 3, 2008, at 4; and United States Government Accountability Report to Congressional Requesters: Home Mortgages: Provisions in a 2007 Mortgage Reform Bill (H.R. 3915) Would Strengthen Borrower's Protections But Views on Their Long Term Impact Differ (July 2009) at 19, available at *http://www.gao.gov/new.items/d09741.pdf.*

[325] *See* The PWG March 2008 Report and The President's Working Group, *Progress Update on March Policy Statement on Financial Market Developments,* October 2008 (both reports noting that the breakdown in underwriting standards for subprime mortgages as one of a list of principal causes of the turmoil in the financial markets).

[326] 17 CFR 229.1111.

[327] Item 1111 requires this disclosure on the assets, as material, whether or not the sponsor is also the originator of the assets or the sponsor acts as an aggregator or consolidator of loans.

[328] Item 1111(a)(3) requires a description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool assets, including, to the extent known, any changes in such criteria and the extent to which policies and criteria are or could be overridden.

Second, we are proposing to require disclosure of what steps were undertaken by the originator or originators to verify the information used in the solicitation, credit-granting or underwriting of the pool assets.[329] Such information could include how the originator documented various criteria such as, for example, debt-to-income ratios, loan-to-value ratios or documentation type.[330] We believe that this information should provide helpful insight to investors regarding the underwriting of the pool assets.

Third, we are proposing amendments that would elicit more disclosure regarding certain remedies available to investors in the transaction agreements. As discussed above, most transaction agreements for ABS offerings contain representations and warranties by the sponsor or originator about the quality, legal compliance and other aspects of the pool assets. Typically, investors are entitled to recover through provisions that require the repurchase of assets from the securitized pool by an obligated party. The obligated party, typically the sponsor, would be obligated to repurchase the assets if the representations and warranties have been breached. Item 1111(e) currently requires summary disclosure regarding any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction. The item also requires disclosure of the remedies available if those representations and warranties are breached, such as repurchase obligations. In addition, many transaction agreements may provide for the repurchase of assets if the servicer has modified the terms of an asset in the pool in a manner or to a degree that is prohibited under the transaction agreements.

To help ensure that issuers provide meaningful disclosure in an area that has become increasingly important for investors, we are proposing to replace Item 1108(c)(6) with a more detailed and specific disclosure requirement in Item 1111.[331] Item 1108(c)(6) currently requires disclosure to the extent material of any ability of the servicer to waive or modify any terms, fees, penalties or payments on the assets and the effect of any such ability, if material, on the potential cash flows from the assets. Our proposal would replace Item 1108(c)(6) with a more detailed and specific disclosure requirement in Item 1111. As proposed to be revised, Item 1111 would require a description of the provisions in the transaction agreements governing modification of the assets. We also are proposing to require disclosure regarding how modification may affect cash flows from the assets or to the securities.

We also are proposing to require disclosure of whether or not a fraud representation is included among the representations and warranties. Under the proposal, the issuer would provide disclosure regarding whether a representation was made that no fraud has taken place in connection with the origination of the assets on the part of the originator or any party involved in the origination of the assets. We believe that it is important to highlight this representation to investors, although we do not intend to diminish the importance of other representations and warranties regarding the pool assets that are provided.

Existing Item 1111 requires the disclosure of statistical information about the pool in appropriate distributional groups or incremental ranges, among other things. The rule also requires that statistical information for each group or range also should be presented by material variables, such as average balance, weighted average coupon, average age and remaining term, average loan-to-value or similar ratio, and weighted average standardized credit score or other applicable measure of obligor credit quality.[332] Because we believe that existing Item 1111 calls for statistical information in the prospectus regarding an originator's "risk-layering practices" that demonstrates the manner and extent to which multiple non-traditional features of a loan are bundled into one instrument, issuers should already be providing this disclosure.[333] However, to the extent there is ambiguity or lack of clarity in Item 1111 regarding what disclosure with respect to risk-layering practices is required to be provided, we request comment on how to make changes to Regulation AB to require the appropriate disclosure on risk-layering practices.

Request for Comment

- Above we noted that disclosure regarding risk layering practices is required under existing Item 1111. Is the application of Item 1111 to risk-layering practices clear? Is there some way we can make Item 1111 clearer in that regard? Should we revise any other rule in that regard?
- Should we require, as proposed, disclosure on assets that deviate from the disclosed origination underwriting standards that must be accompanied by disclosure of specific data about the amount and characteristics of those assets that did not meet the standards? Should we require, as proposed, that if disclosure is provided regarding compensating or other factors, if any, that were used to determine that the assets should be included in the pool, despite not having met the disclosed underwriting standards, disclosure is required that would describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors? Should we require any other disclosure with respect to exceptions to or deviations from disclosed origination underwriting standards? Should issuers be required to identify each exception loan by a loan identifier that will be disclosed in the proposed Schedule L discussed above?
- Are the proposed amendments relating to disclosure concerning representations and warranties and modification provisions in the transaction agreements appropriate?
- Are there other kinds of disclosure relating to representations and warranties and enforcement mechanisms of those representations and warranties that should be required to be provided? If so, please describe in detail.
- A repurchase obligation also may be imposed under other circumstances.[334] Should the rules require prospectus disclosure of other types of repurchase obligations?
- We are proposing to require disclosure of whether the transaction agreements include a fraud representation. Is this appropriate? Are there other types of representations and warranties that the prospectus should highlight?
- Should we delete Item 1108(c)(6), as proposed? Is there any type of disclosure that will be omitted if we delete Item 1108(c)(6) in lieu of our proposed revision to Item 1111?

[329] *See* proposed revision to Item 1111(a).

[330] The requirement under this proposal to disclose these steps should not be confused with the due diligence defense against liability under Securities Act Section 11 (15 U.S.C. 77k) or the reasonable care defense against liability under Securities Act Section 12(a)(2) (15 U.S.C. 77*l(a)(2)*). Instead, our proposed amendment is designed to provide disclosure of information relating to the originator's diligence to verify the information used to underwrite the assets.

[331] 17 CFR 229.1108(c)(6).

[332] *See also* Section III.B.5.a. of the 2004 ABS Adopting Release.

[333] We believe that this would include risks relating to the geographic location of the property.

[334] For example, there may be obligation to repurchase a loan that goes into payment default within a short period of time after closing.

B. Flow of Funds

1. Waterfall Computer Program

We are proposing to require that most ABS issuers file a computer program that gives effect to the flow of funds, or "waterfall," provisions of the transaction. We are proposing that the computer program be filed on EDGAR in the form of downloadable source code in Python. Python, as we will discuss further below, is an open source interpreted programming language.[335] Under our proposal, an investor would be able to download the source code for the waterfall computer program and run the program on the investor's own computer (properly configured with a Python interpreter).[336] The waterfall computer program would be required to allow use of the asset data files that we are also proposing today.[337] This proposed requirement is designed to make it easier for an investor to conduct a thorough investment analysis of the ABS offering at the time of its initial investment decision. In addition, an investor may monitor ongoing performance of purchased ABS by updating its investment analysis from time to time to reflect updated asset performance.[338] In this way, market participants would be able to conduct their own evaluations of ABS and may be less dependent on the analysis of third parties such as credit rating agencies.

The waterfall is a critical component of an ABS. Currently investors receive only a textual description of this information in the prospectus, which may make it difficult for them to perform a rigorous quantitative analysis of the ABS.[339] In a typical ABS, the waterfall governs the application of cash collected on pool assets. Using the waterfall, cash collections are applied to distributions to the holders of various classes of ABS backed by the pool assets. Depending on the level of prepayments, defaults and losses-given-default[340] that occur on the pool assets, the waterfall may redirect the application of cash to or away from a particular class of securities; may allocate cash to a reserve account or require the release of reserve account cash;[341] may change the allocation of cash to the classes in an ABS transaction from sequential pay to pro rata pay,[342] and vice versa; or may accelerate or defer the application of principal prepayments to a particular tranche. As a result, the calculation of the probable amount and timing of cash distributions to an investor on a particular ABS, an essential element of valuing or pricing the security, can be complex.

Institutional sellers and buyers of ABS typically rely on computer simulation of the results of applying the cash flows on the pool assets to the waterfall under different interest rate, prepayment, default and loss-given-default assumptions to determine the likely amount and timing of cash distributions on, and therefore the value of, the ABS. A common approach to this task is to: (a) Run many separate simulations, or projections, of the cash flows for the pool assets (using randomly generated assumed interest rates, prepayment speeds, default rates and loss-given-default rates—a simulation process referred to as the Monte Carlo method); (b) pass these simulated cash flows through the waterfall structure of the ABS; and (c) observe the resulting cash flows for each separate ABS tranche. To conduct this analysis, a market participant requires:

- Loan-level information, or grouped account data, about the assets, including such fields as their coupon rates, balances, loan-to-value ratios, maturity dates, and the borrowers' credit scores, among others;
- A computer program that calculates the contractual cash flows for each tranche of the ABS based on the presumed cash flows of the underlying pool assets;
- Additional computer models that generate inputs for the computer simulation (such as interest rate, prepayment, loss and loss-given-default models); and
- A computer system that combines the three elements above into a model that allows investors to calculate the values of ABS tranches based on their own assumptions about the behavior of the underlying pool assets combined with the waterfall of the ABS, and the current state and performance of the underlying pool assets.

Without these tools, market participants must rely on third party vendors to provide quantitative analysis of the asset-backed security[343] or must rely on computational materials provided by the issuer, without the opportunity to test the model or vary the assumptions used by the issuer.[344]

The ABS issuer or the underwriter generally will have a computer model of the waterfall. However, the issuer or underwriter currently has no obligation to share the computer model with actual or potential ABS investors. Because prospective investors in ABS typically do not have access to the ABS issuer's computer models, under current conditions, an investor must create its own computer program. It does this by taking the priority of payment rules stated in the trust agreement, pooling and servicing agreement, indenture, or other operative document for the ABS and described in the prospectus, converting the English language statement of those provisions into one or more algorithms, and then expressing the algorithms as computer code in a programming language. As a practical matter, it is often not possible to complete these steps before making an investment decision. This is particularly onerous for smaller institutional

[335] Open source means that the source code is available to all users (as opposed to proprietary source code that can be viewed only by the owner/developers of the program). An interpreted programming language is one that requires an interpreter in the target computer for program execution. *See* Section III.B.1.d. below.

[336] An interpreter is a programming language translator that translates and runs the program at the same time. It converts one program statement into machine language, executes it, and then proceeds to the next statement. This differs from regular executable programs that are presented to the computer as binary-coded instructions. Interpreted programs remain in the source language the programmer wrote it in, which is human readable text.

[337] *See* Sections III.A.1., III.A.2. and III.A.3 above.

[338] Updated asset performance data would be required under proposed Item 1121(d) and (e) for Regulation AB. *See* Sections III.A.2. and III.A.3.

[339] *See* Item 1113 of Regulation AB [17 CFR 229.1113]. The waterfall computer program is a necessary but not a sufficient tool for carrying out quantitative analysis of an ABS. We recognize that investors will still have to build or acquire from a vendor other elements of a complete cash flow and valuation model. However, requiring the issuer to supply the waterfall computer program should make the investor's task easier, and is an appropriate subject of a filing requirement as it consists of information that is specific to the particular ABS being offered.

[340] By losses-given-default we mean the amount of unrecovered principal on a defaulted asset after realization of all amounts available.

[341] A reserve account is a form of internal credit enhancement created to cover losses on the pool assets.

[342] Sequential pay means that from the inception of the transaction, a single designated class receives all available principal payments until it is retired; only then does a second designated class begin to receive principal; and so on. Pro rata pay means that all classes receive their proportionate shares of principal payments during the life of the securities.

[343] Our proposed requirement to file the waterfall computer program is intended to have same functionality as a "deal" in a "deal library" that has been coded or programmed from an authoritative statement of the waterfall, such as a pooling and servicing agreement. Deal and deal library are terms used by commercial vendors of quantitative valuation analysis services and their customers. The process of coding or programming the waterfall for an ABS is referred to by vendors as "scripting" a deal.

[344] Computational materials contain statistical data displaying for a particular class of asset-backed securities the yield, average life, expected maturity, interest rate sensitivity, cash flow characteristics or other such information under specified prepayment interest rate, loss or related scenarios. *See* Item 1101(a) of Regulation AB [17 CFR 229.1101(a)] and Section III.C. of the 2004 ABS Adopting Release.

investors, for whom it may not be feasible to acquire the financial and technological expertise necessary to develop a computer program of the waterfall. Thus, investment decisions with respect to ABS may be made without the benefit of the investor performing its own quantitative valuation analysis. This may encourage undue reliance on the determinations of credit rating agencies. Further, there is the possibility that some investors will program the waterfall erroneously, leading to inaccurate ABS valuations.

We believe that the proposed requirement to file the waterfall computer program would convey information to investors in a form that is both more accurate and more useful to them for data analysis than a textual description of the waterfall. By running the waterfall computer program in combination with other internally-developed or commercially available vendor interest rate, prepayment, default and loss-given-default models, cash flow engines, or computational services, investors should be able to promptly run cash flow simulations and generate present value estimates for ABS tranches. An investor should also be able to more effectively monitor the ongoing performance of the ABS by using the proposed updated asset-level performance information to be filed with each periodic distribution report on Form 10–D.

(a) Proposed Disclosure Requirements

We are proposing to require, for offerings of asset-backed securities backed by most asset classes, that issuers file the waterfall computer program in the form of downloadable source code in the Python programming language.[345] We define the disclosure requirements of the waterfall computer program in proposed Item 1113(h)(1). We are proposing that the waterfall computer program give effect to the priority of payment provisions in the transaction agreements that determine the funds available for payments or distributions to the holders of each class of securities,[346] and each other person or account entitled to payments or distributions, from the pool assets, pool cash flows, credit enhancement or other support, and the timing and amount of such payments or distributions.[347]

Under the proposed requirement, the filed source code, when downloaded and run by an investor, must provide the user with the ability to programmatically input the user's own assumptions regarding the future performance and cash flows from the pool assets, including but not limited to assumptions about future interest rates, default rates, prepayment speeds, loss-given-default rates, and any other necessary assumptions required to be described under Item 1113 of Regulation AB. The waterfall computer program must also allow the use of the proposed asset-level data file that will be filed at the time of the offering and on a periodic basis thereafter.[348]

We also propose to require that the waterfall computer program produce a programmatic output, in machine-readable form, of all resulting cash flows associated with the ABS, including the amount and timing of principal and interest payments payable or distributable to a holder of each class of securities, and each other person or account entitled to payments or distributions in connection with the securities, until the final legal maturity date, as a function of the inputs into the waterfall computer program.

We are also proposing an instruction to the item requirement to make clear that the provisions captured in the waterfall computer program should include, but not be limited to, provisions that set forth the priorities of payments or distributions (and any contingencies affecting such priorities) to the holders of each class of securities and any other persons or accounts entitled to payments or distributions, and any related provisions necessary to determine the quantitative results of such provisions (including certain provisions required to be described in Item 1113 of Regulation AB). Item 1113 of Regulation AB currently requires disclosure of a plain English description of the structure of the waterfall and we believe that the provisions given effect in the proposed waterfall computer program should largely be the same as those provisions required to be described under current Item 1113. But in the event that there are any provisions that are not required to be described under Item 1113 because they are not material to the description of the waterfall in the prospectus, but those provisions are used to determine the value of the inputs to the waterfall computer program, the waterfall computer program would be required to give effect to the provisions by which those inputs are determined.

In addition, we are proposing to require that the issuer file as part of the waterfall computer program a sample expected output for each ABS tranche based on sample inputs provided by the issuer. By using the sample inputs to run the program, the investor will be able to confirm that the program is working correctly by matching the actual outputs produced against the sample expected output provided by the issuer.[349]

Lastly, so that investors may easily locate the waterfall computer program, we are proposing that the prospectus include a statement that the information provided in response to proposed Item 1113(h) is provided as a downloadable source code in the Python programming language filed on the SEC Web site. Issuers would also need to disclose the CIK and file number of the related filing.

(b) Proposed Exemptions

We are proposing to exclude issuers of ABS backed by stranded costs from the requirement to provide the waterfall computer program. As we discuss above, we are not proposing to require such issuers to file an asset data file at the time of the offering or on a periodic basis,[350] and therefore, we do not believe investors would have the necessary inputs to run the waterfall computer program.

(c) When the Waterfall Computer Program Would Be Required

Like the asset data file, the waterfall computer program would be an integral part of the prospectus so that issuers would be required to provide the waterfall computer program at the time of filing the Rule 424(h) prospectus as of the date of the filing. Similarly, as a prospectus requirement, the waterfall computer program would be filed with the final prospectus under Rule 424(b) as of the date of the filing.

In addition, we are proposing to require credit card master trusts to report changes to the waterfall computer program on Form 8–K and file the updated waterfall computer program as an exhibit to the report. Furthermore, we are also proposing to require that registrants provide updated Schedule CC grouped account data at the same time the updated waterfall computer program is filed so that investors may evaluate the effect of the change in the

[345] When we refer to a waterfall computer program for an asset-backed security, we refer to the whole offering of asset-backed securities backed by a particular pool of assets; in other words, the deal, not to a single class or tranche of the deal.

[346] For this purpose, a subclass or tranche would be a separate class.

[347] *See* proposed Item 1113(h)(1)(i) of Regulation AB.

[348] *See* proposed Items 1111A and 1121A of Regulation AB.

[349] We note that the sample inputs and outputs we propose to require are intended to confirm that the program is functioning, and would not serve to make any representations about the actual expected performance of the deal.

[350] *See* Sections III.A.1.b.iii. and III.A.2.b.

flow of funds using updated underlying pool information.

(d) Filing the Waterfall Computer Program and Python

We are proposing that the waterfall computer program be filed as an exhibit in accordance with Item 6.07 of Form 8–K. The Form 8–K would then also be incorporated by reference into the registration statement. Therefore, we are proposing changes to Item 601 of Regulation S–K, Rules 101, 201, 202 and 305 of Regulation S–T, new Rule 314 of Regulation S–T and changes to Form 8–K to accommodate the filing of the waterfall computer program. We realize that registrants may want to provide more program functionality in the waterfall computer program than would be required by proposed Item 1113(h). For example, additional program functionality could include features designed to allow interoperability with other ABS quantitative analysis software. As such, we also propose to permit the filing of an additional exhibit, a waterfall computer program related document, for registrants to disclose the additional program functionality.

We are proposing new Rule 314 of Regulation S–T to require that the waterfall computer program be written in the Python programming language and be filed as source code that is able to be downloaded and run on a local computer properly configured with a Python interpreter. As we note above, Python is an open source interpreted programming language. Open source means that the source code is available to all users (as opposed to proprietary source code that can be viewed only by the owner or developer of the program). An interpreted language is a programming language that requires an interpreter in the target computer for program execution.[351] We prohibit the inclusion of executable code in electronic submissions on EDGAR because of the computer security risks posed by accepting executable code for filing.[352] Executable code results from separately compiling a computer program prior to running it.[353] Since Python is an interpreted language that does not need to be compiled prior to running it, executable code would not need to be published on EDGAR, and we would not require EDGAR to establish facilities to host, run, or operate any computer program. The waterfall computer program source code would be required to be submitted as tagged XML data. The EDGAR Technical Specification would contain detailed information on how to file the waterfall computer program.

Additionally, we are proposing a change to Rule 305 of Regulation S–T to exempt the waterfall computer program from number and character per line requirements on EDGAR.

(e) Hardship Exemptions

We are proposing a self-executing temporary hardship exemption for filing the waterfall computer program; however, we are proposing to exclude the waterfall computer program from the continuing hardship exemption under Rule 202 of Regulation S–T.[354] We are proposing the same approach to the temporary hardship exemption for the waterfall computer program as we propose for the asset-level data file. Because the disclosure requirement for the waterfall computer program is inherently electronic, the information would not be useful if provided on paper. Under our proposal, if the registrant experiences unanticipated technical difficulties preventing the timely preparation and submission of the waterfall computer program, a registrant would be considered to have made a timely filing if the waterfall computer program is posted on a Web site on the same day it was due to be filed on EDGAR, the Web site address is specified in the required exhibit, a legend is provided in the appropriate exhibit claiming the hardship exemption, and the waterfall computer program is filed on EDGAR within six business days.

We are also proposing to exclude the waterfall computer program from the continuing hardship exemption under Rule 202 of Regulation S–T. This is the same approach for the waterfall computer program that we are proposing for asset-level data files. We do not believe a continuing hardship exemption is appropriate with respect to the waterfall computer program because, as we discuss above, the waterfall computer program will be an integral part of the prospectus. Therefore, we do not believe it would be appropriate for issuers to receive a continuing hardship exemption for the waterfall computer program.

Request for Comment

- Is it appropriate for us to require most ABS issuers to file the waterfall computer program? Is there an alternative form of required information filing that would be more useful to investors, subject to the limitation that executable code may not be filed on EDGAR?
- Should we require, as proposed, that the Rule 424(h) filing include the waterfall computer program?
- Does access to the waterfall computer program decrease the amount of time needed to analyze the information in a prospectus? If we adopt the waterfall computer program filing requirement, would less time be needed for investors to review transaction-specific information? If so, how much time would be needed after the waterfall computer program is filed? Four days? Two days? Does analysis of the waterfall computer program require more time than what we allow as proposed so that we should increase the time period for the Rule 424(h) filing?
- Is it appropriate to require issuers to submit the waterfall computer program in a single programming language, such as Python, to give investors the benefit of a standardized process? If so, is Python the best choice or are there other open source programming language alternatives (such as PERL) that would be better suited for these purposes?
- Should more than one programming language be allowed? If so, which ones and why?
- Should we restrict ourselves to only open source programming languages or allow fully commercial or partly-commercial languages (such as C-Sharp or Java) to be used? If so, what factors should be considered?
- Are there other requirements we should impose on the possible computer programming languages that are used to satisfy this requirement, other than that such languages be open source and interpreted?
- Under our proposal, issuers would be required to file the waterfall computer program in the form of downloadable source code on EDGAR. Prior to filing, the code would not be tested by the Commission. Would downloading the code onto a local computer give rise to any significant risks for investors? If so, please identify those risks and what steps or measures

[351] An interpreter is a programming language translator that translates and runs the program at the same time. It converts one program statement into machine language, executes it, and then proceeds to the next statement. This differs from regular executable programs that are presented to the computer as binary-coded instructions. Interpreted programs remain in the source language the programmer wrote it in, which is human readable text.

[352] *See* Securities Act Rule 106 to Regulation S–T [17 CFR 239.106].

[353] We define executable code in Rule 11 of Regulation S–T [17 CFR 239.11] as instructions to a computer to carry out operations that use features beyond the viewer's, reader's, or Internet browser's native ability to interpret and display HTML, PDF, and static graphic files. Such code may be in binary (machine language) or in script form. Executable code includes disruptive code.

[354] We explain the hardship exemptions in further detail above in Section III.A.4.b.

we should take to address the risks, if any.

• Are the proposed input and output requirements for the waterfall computer program appropriate? If not, what type of output and tests should be required for the waterfall computer program? Should the outputs of the waterfall computer program be specified in detail by rule, or broadly defined to afford flexibility to ABS issuers?

• Should we require comments in the code that explain what each line does? Is this necessary given the narrative disclosure of the waterfall in the prospectus? If it is appropriate, are there any specific explanations we should require?

• Is it appropriate to exempt issuers of ABS backed by stranded costs from the requirement to provide a waterfall computer program? If not, what types of inputs would be necessary to run the waterfall computer program? How would issuers obtain these inputs?

• Is our proposal to require credit card master trusts to report changes to the waterfall computer program on Form 8–K and file the updated waterfall computer program as an exhibit appropriate? Would the flow of funds, and thus the waterfall computer program, change over time? If so, how and why would it change? Should we require the waterfall computer program be filed at any other time? Should we require it be filed with each Form 10–D?

• Is the proposed requirement to provide the waterfall computer program with the proposed Rule 424(h) prospectus as of the date of filing and a final prospectus under Rule 424(b) as of the date of filing appropriate? Should the waterfall computer program be required to be filed at any other time? If so, please tell us why. As we discuss above in Section II.B.1.a., under our proposal, for material changes in information, other than offering price, which would include material changes to the waterfall computer program, a new Rule 424(h) filing would be required as well as a new five business-day waiting period.

• Should we adopt the proposed changes to Item 601 of Regulation S–K and to Regulation S–T?

• Is the proposed temporary hardship exemption appropriate? Should we allow a continuing hardship exemption?

• We propose to use existing submission types in order to enable filers to attach the proposed waterfall computer program as an exhibit. Specifications that explain the requirements would be included in the EDGAR technical specifications. Are there other specifications that would be helpful that should be provided in the EDGAR Filer Manual for the waterfall computer program that are not currently included in other technical specifications? Please be specific in your response.

• Should we provide a transition period prior to the required compliance date that would allow filers to submit only test filings? Please be specific in your response.

• Is our proposal to permit the filing of an exhibit to disclose additional program functionality appropriate?

• Are there any impediments that issuers would face if they are required to file the waterfall computer program on EDGAR?

2. Presentation of the Narrative Description of the Waterfall

The information relating to the structure of the transaction pursuant to Item 1113 of Regulation AB may be used by investors to model the cash flows for the securities. In order to facilitate this modeling, we believe that such information should be easily accessible and in a useable format. We are proposing to revise Item 1100 of Regulation AB [355] to require that the information detailing the flow of funds for the transaction (and related definitions of terms) be included in one location in the prospectus. We note that the waterfall computer program and the narrative description of the waterfall would need to be accurate and the accuracy of one would not compensate for inaccuracies in the other.

Request for Comment

• Is our proposal to require that the narrative description of the waterfall be presented in one location appropriate? Are there any reasons not to require this?

C. Transaction Parties

1. Identification of Originator

Existing Item 1110(a) of Regulation AB requires identification of originators apart from the sponsor or its affiliates only if the originator has originated, or expects to originate, 10% or more of the pool assets. The existing rule does not require identification of a non-affiliate that has originated less than 10% of the pool assets. In situations where much of the pool assets have been purchased from originators other than the sponsor, identification of originators is not required if each originator has originated less than 10% of the pool assets. This can result in very little, if any information about originators if there are multiple originators with less than 10% that make up a major part of the securitization. We believe that where the sponsor securitizes assets of a group of originators that are not affiliated with the sponsor, more disclosure regarding the originator of the assets is needed than is required under the current rules. Therefore, we are proposing that an originator would be required to be identified even if such originator has originated less than 10% of the pool assets if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises more than 10% of the total pool assets.

Request for Comment

• Should we amend Item 1110 to require identification of originators even if no single originator comprises 10% or more of the pool? Is it appropriate to require identification of originators, as proposed, if the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises 10% or more of the total pool asset?

• Are the proposed revised thresholds for originator identification appropriate? Should they be different (*e.g.,* 5%)?

2. Obligation To Repurchase Assets

We are proposing expanded disclosure regarding the obligations to repurchase assets. As discussed above, many transaction agreements underlying a securitization provide for the repurchase of pool assets by an obligated party upon breach of a representation and warranty related to the pool assets.[356] This obligated party could be the originator of the assets or, most typically, the sponsor of the securities—who could also function as the originator, depending on the transaction. Depending on the application of Section 15(d) to the issuer, ongoing reports filed by the issuer may provide some information regarding assets that have been repurchased from the pool by the obligated party pursuant to transaction agreements.

[355] 17 CFR 229.1100.

[356] As discussed in Section II.B.3.b. above, with respect to shelf eligibility, we are proposing that the pooling and servicing agreement contain a provision requiring the obligated party (*i.e.,* representing/warranting party) to furnish an opinion or certificate from a qualified independent third party to the trustee that any loans that the trustee has asserted breached a representation or warranty and were not repurchased or replaced by the obligated party did not violate the representations and warranties contained in the pooling and servicing or other agreement. Neither this provision nor the proposed requirement regarding the disclosure of the obligation to repurchase assets would impose requirements on the substance of transaction agreements to include such repurchase obligations.

(a) History of Asset Repurchases

We are proposing to amend Item 1104 and Item 1110 to require disclosure of the amount, if material, of publicly securitized assets originated or sold by the sponsor or an identified originator (as identified under the specifications detailed below) that were the subject of a demand to repurchase or replace any of the assets for breach of the representation and warranties concerning the pool assets in the last three years pursuant to the transaction agreements.[357] We are proposing to require that such disclosure be provided on a pool by pool basis. The percentage of that amount that was not then repurchased or replaced by the obligated party (*i.e.,* the sponsor and/or originator) also would be disclosed. Of those assets that were not then repurchased or replaced, we propose to require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets did not violate a representation or warranty. This enhanced information about the originator or sponsor's history with assets they have originated or sold into public securitization vehicles should allow investors to better assess practices of the originator or the sponsor.

Under existing Item 1110(b), additional disclosure relating to an originator, such as the originator's experience in originating assets, is only required to be provided if the originator has originated or is expected to originate 20% or more of the assets ("20% originator"). This threshold for disclosure was adopted in 2004. Consistent with the existing threshold, the proposed disclosure requirement relating to the repurchase of assets would only be required if the originator is a 20% originator.

(b) Financial Information Regarding Party Obligated To Repurchase Assets

In the events arising out of the financial crisis, the financial condition of the party obligated to repurchase assets pursuant to the transaction agreements underlying an asset-securitization became increasingly important to whether payments on asset-backed securities would be made.[358] Currently, there is no requirement for asset-backed issuers to disclose the financial condition of an originator unless some other financial disclosure threshold is also triggered such as the trigger for servicers.[359] We believe that there are situations where it is appropriate for financial information about certain obligated parties to be provided to ABS investors.

We are proposing to amend Item 1104 and Item 1110(b) to require financial information of the party obligated to repurchase a pool asset for breach of a representation and warranty pursuant to the transaction agreements. These requirements would be similar to the requirement regarding financial information of certain servicers. Under the proposal, information regarding the financial condition of a 20% originator would be required if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets. Information regarding the sponsor's financial condition similarly would be required to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

Request for Comment

- Is the proposed amendment requiring disclosure regarding amount of assets that were not repurchased appropriate? Should we also require, as proposed, disclosure of the percentage of that amount that was not then repurchased or replaced by the sponsor or 20% originator? Should we also, as proposed, require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty?
- Would requiring this disclosure, as proposed, have the unintended consequence of incentivizing sponsors (who may want to put an asset back to an originator) or trustees to demand that originators repurchase assets in situations where that might not be required under the transaction agreements? If so, how should we address this?
- Should we also require disclosure of the percentage of assets that have been repurchased by a 20% originator or the sponsor?
- Should disclosure be required regarding demands to repurchase in the last three years, as proposed? Should the timeframe be different (*e.g.,* one year, two years, four years, or five years)?
- Are there parties other than 20% originators or sponsors that may have a repurchase obligation under the transaction agreements for breach of the representations and warranties? If so, should similar disclosure about these parties be required?
- With regard to the requirement to disclose the financial condition of originators and sponsors, rather than add disclosure requirements to Item 1104 and Item 1110, should we expand the definition of significant obligor to incorporate the obligated party that is required to repurchase assets for breach of a representation or warranty? How should we revise Item 1112 for this purpose?
- Are the proposed amendments relating to disclosure of the financial condition of the obligated party appropriate? Should we specify further when disclosure of the financial condition would be required such as a certain level of financial concentration? If so, what should that level be? Should we require financial information about 20% originators and sponsors for other circumstances? Should we require financial information for 20% originators and sponsors for all securitizations?
- Should our disclosure requirements be consistent with existing thresholds (i.e., when the originator has originated 20% or more of the assets) for when disclosure relating to an originator is required? Should we instead require disclosure of the proposed items for any originator required to be identified? Should we require disclosure of the proposed items for originators of more than ten percent of the assets?
- Are there other situations where we should require financial information? For instance, should we always require disclosure of financial information of all servicers and all sponsors? If so, should we require audited financial statements?

3. Economic Interest in the Transaction

As described in Section III.B.3.a. above, as a condition to shelf eligibility, we are proposing that the sponsor retain

[357] Although we are not proposing to require it, additional disclosure regarding the repurchase of assets could be provided.

[358] *See* testimony of Joseph Mason, "Transparency in Accounting: Proposed Changes to Accounting for Off-Balance Sheet Entities," Before the United States Senate Committee on Banking, Housing, and Urban Affairs Subcommittee on Securities, Insurance, and Investment (Sept. 18, 2008) (noting that representations and warranties have become a mechanism for subsidizing pool performance, so that no asset- or mortgage-backed security investor experiences losses—until the seller fails and is no longer able to support the pool).

[359] For example, information regarding the servicer's financial condition is required under Item 1112 of Regulation AB to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities.

an economic interest in the transaction. Item 1103(a)(3)(i) of Regulation AB [360] currently requires disclosure of the classes of securities offered by the prospectus and any class of securities issued in the same transaction or residual or equity interests in the transaction that are not being offered by the prospectus.

We believe that information regarding the sponsor's, a servicer's [361] or a 20% originator's continuing interest in the pool assets is important to ABS investors, and we are proposing to expand our requirements in that regard. Specifically, we are proposing to revise Items 1104, 1108 and 1110 to require disclosure regarding the sponsor's, a servicer's or a 20% originator's interest retained in the transaction, including amount and nature of that interest.[362] Unlike current Item 1104, which requires a description of the sponsor's material roles and responsibilities in the securitization, the new disclosure requirements would further specify that disclosure relating to the interest retained in the transaction would be required. The information would be required for both shelf and other offerings. If any sponsor is retaining an interest pursuant to the shelf eligibility requirements, as proposed above,[363] the interest and its amount and scope would need to be clearly delineated in the prospectus that is contained in the registration statement.[364] If the offering is being registered on Form SF–1, we are proposing to require that the issuer provide clear disclosure that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

Request for Comment

- Is our proposed disclosure requirement relating to retained economic interest appropriate? Is there any additional information that would aid investors' analysis?
- Should we instead require disclosure of whether the sponsor has retained any interest in the securitization?
- Should we require, as proposed, disclosure that the sponsor is not required by law to retain any risk in the securities and may sell any interest initially retained at any time for any offering registered on Form SF–1?

4. Servicer

The definition of servicer in Item 1108 is a principles-based definition. An entity falls within the definition of servicer if it is responsible for the management or collection of the pool assets or making allocations or distributions to holders, regardless of the entity's title. Item 1108(b)(2) of Regulation AB [365] requires a detailed discussion in the prospectus of the servicer's experience in, and procedures for, the servicing function it will perform in the current transaction for assets of the type included in the current transaction.[366] This item also requires disclosure of information or factors related to the servicer that may be material to an analysis of the servicing of the assets.

While we are not proposing any changes to Item 1108(b)(2) at this time, the staff believes that application of this requirement has not been consistent among issuers, and therefore we believe it is appropriate to emphasize how this requirement applies. Item 1122 requires that the servicer assess its compliance with specified criteria and that a registered public accounting firm issue an attestation report on the party's assessment of compliance with the applicable servicing criteria. The reports and the compliance statement are required to be filed as an exhibit to Form 10–K. We believe that Item 1108(b)(2) requires disclosure of any material instances of noncompliance noted in the assessment or attestation reports that are required by Item 1122 or the servicer compliance statement that is required by Item 1123. In addition, the prospectus should also provide disclosure of any steps taken to remedy the noncompliance disclosed and the current status of those steps.

Request for Comment

- Are there any changes we should make to Item 1108(b)(2) to clarify what disclosure should be included?
- Item 1108(b)(4) [367] requires information regarding the servicers' financial condition to the extent there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the securities. Should we revise this requirement?
- For example, should we require financial statements or other financial information be provided with respect to the servicer in all asset-backed transactions, regardless of whether there is a material risk that servicing resulting from the financial condition could have a material impact on pool performance or performance of the securities? If the servicing function is divided among different unaffiliated parties, should disclosure of a servicer's financial statements depend on how much of the pool a servicer is servicing? What about a special servicer? Should we take into account any other considerations?
- If we revise our rules to specifically require servicer financial statements in all cases, how should the rules apply if the registration statement or offering prospectus contemplates a change in servicer soon after the offering is complete? In that situation, which servicer's financial statements should be required—the original servicer, the new servicer, or both? [368]

D. Prospectus Summary

Under our current rules, a prospectus summary should briefly highlight the material terms of the transaction, including an overview of the material characteristics of the asset pool.[369] However, we believe that summary disclosures in ABS prospectuses currently may not adequately highlight the material characteristics, including material risks, particular to the ABS being offered. Instead, the prospectuses often summarize metrics that are common to all securitizations of a particular asset class. For instance, under current practice, a prospectus summary related to an offering of securities backed by residential mortgages typically only includes common metrics such as the number, averages and ranges of common pool characteristics such as principal balances, interest rates, credit scores and loan to value. Other material characteristics of pool assets, however, typically are not highlighted, such as statistics regarding whether the loans in the asset pool were originated under

[360] 17 CFR 229.1103(a)(3)(i).

[361] Servicers will sometimes hold an interest in tranches or second liens, and investors have expressed concern relating to those interests. *See, e.g.,* comment letter from the California Public Employees' Retirement System on the FDIC Securitization Proposal, available at *http://www.fdic.gov/regulations/laws/federal/2010/10comAD55.html.*

[362] For example, if the originator has retained a portion of each tranche of the securitization, then disclosure regarding each amount retained for each tranche would be required.

[363] *See* Section II.B.3.a. above.

[364] This information is also required by proposed General Instruction I.B.1(a) of Form SF–3.

[365] 17 CFR 229.1108(b)(2).

[366] Item 1108 also requires a general discussion of the servicer's experience in servicing assets of any type.

[367] 17 CFR 229.1108(b)(4).

[368] If there has been a change in servicer, Item 6.02 of Form 8–K requires that when a new servicer contemplated by Item 1108(a)(2) of Regulation AB has been appointed, the date the event occurred and circumstances surrounding the change of servicer must be provided. We remind issuers that a Form 8–K containing such disclosure is required to be filed even where the offering prospectus has indicated that the sponsor is only temporarily acting as the servicer and that a new servicer will replace the sponsor.

[369] *See* Item 1103 of Regulation AB.

various underwriting or origination programs, whether loans were underwritten as exceptions to the underwriting or origination programs, or whether the loans in the pool have been modified. We believe these types of statistics could be summarized by broad category on the basis of the underwriting program, type of exception or modification, but historically, this type of information has not been included.

We believe that the summary disclosures should be improved to include this information, which is among the most significant for investors. Accordingly, we are proposing a new instruction to Item 1103(a)(2) of Regulation AB [370] to clarify the summary disclosure requirements. Specifically, the proposed new provision would instruct issuers to provide statistical information regarding the types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.

Request for Comment

- Is our proposed instruction to require summary statistical information regarding the types of underwriting or origination programs, exceptions to underwriting and origination criteria and, if applicable, modifications made to the pool assets after origination appropriate?
- Should we specify line item disclosure requirements for the summary section? If so, are the pool characteristics identified in the proposed new instruction appropriate? Would those characteristics be common across all asset classes, or only apply to a specific asset class?
- Are there other features of the transaction that we should specify must be disclosed in the summary?

E. Static Pool Information

When we adopted Regulation AB, we included the requirement to disclose static pool information with respect to prior securitized pools of the sponsor for the same asset class in the prospectus that is part of the registration statement if the information is material to the transaction. Static pool information indicates how the performance of groups, or "static pools" of assets, such as those originated at different intervals, are performing over time. By presenting comparisons between originations at similar points in the assets' lives, static pool data allows detection of patterns that may not be evident from overall portfolio numbers and thus may reveal a more informative picture of material elements of portfolio performance and risk. In the 2004 ABS Adopting Release, we noted that the development of static pool information was an increasingly valuable tool in analyzing performance.[371]

Under Rule 312 of Regulation S–T, asset-backed issuers are permitted, but not required, to post the static pool information required by Item 1105 on an Internet Web site, rather than file the information with the prospectus on EDGAR. As long as certain conditions are met, the information provided on the Web site pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement. Rule 312 was adopted in 2004 as a temporary accommodation in response to comments received concerning the significant amount of statistical information that would be difficult to file electronically on EDGAR as it existed at the time and the difficulty for investors to use the information in that format. At the time, we were persuaded by commenters that a web-based approach might allow for the provision of the required information in a more efficient, dynamic and useful format than was currently feasible on the EDGAR system.[372] At the same time, we explained that we continued to believe that, at some point, for future transactions, the information should also be submitted to the Commission in some fashion, provided this would not result in investors not receiving the information in the form they have requested. We also explained that we were directing our staff to consult with the EDGAR contractor, EDGAR filing agents, issuers, investors and other market participants to consider how static pool information could be filed with the Commission in a cost-effective manner without undue burden or expense while still allowing issuers to provide the information in a desirable format.[373]

On October 19, 2009, we proposed to extend the temporary filing accommodation until December 31, 2010 so that the staff could continue to explore whether a filing mechanism for static pool information on EDGAR would be feasible.[374] In that release we solicited comments about current practice and potential alternatives for providing static pool disclosure that we will discuss below. On December 15, 2009, we adopted the proposed one-year extension.[375]

We now are proposing changes to Item 1105 seeking to provide greater transparency and comparability with respect to static pool disclosure. We also are proposing to repeal our temporary Web site accommodation for static pool disclosure. These proposed changes to Rule 312 would allow issuers to make filings on EDGAR in Portable Document Format (PDF).[376]

1. Disclosure Required

We are proposing revisions to the static pool disclosure requirement designed to increase clarity, transparency and comparability. Some of our proposals apply to all issuers, and some apply only to amortizing asset pools and not revolving asset master trusts. Since adoption of Regulation AB, we have observed that static pool information provided by asset-backed issuers may vary greatly within the same asset class. Variations exist not only with regard to the type or categories of information disclosed, but also with the manner in which it is disclosed. As a result, static pool information between different sponsors has not necessarily been comparable, which reduces its value to investors. For example, some issuers of residential mortgage-backed securities provide a one-page graphical static pool presentation, while others present several hundred pages of distribution data for prior securitized pools on their Web site, making it difficult to determine which prior securitizations were most similar to the securities being offered.

Static pool information is required to the extent the information is material. In the 2004 ABS Adopting Release, we

[370] 17 CFR 229.1103(a)(2).

[371] *See* Section III.B.4. of the 2004 ABS Adopting Release.

[372] *See, e.g.,* Letters of ABA; ASF; Auto Group; BMA; Citigroup; JPMorganChase; NYCBA; and TMCC on *Asset-Backed Securities,* Release No. 33–8419 (May 3, 2004) [69 FR 26650] (the "2004 ABS Proposing Release").

[373] *See* Section III.B.4.b. of the 2004 ABS Adopting Release.

[374] *Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities,* Release No. 33–9074 (Oct. 19, 2009) [74 FR 54767] (the "Static Pool Extension Proposing Release").

[375] *Extension of Filing Accommodation for Static Pool Information in Filings With Respect to Asset-Backed Securities,* Release No. 33–9087 (Dec. 15, 2009) [74 FR 67812] (the "Static-Pool Extension Adopting Release").

[376] Portable Document Format (PDF) is a file format created by Adobe Systems in 1993 for document exchange. PDF captures formatting information from a variety of desktop publishing applications, making it possible to send formatted documents and have them appear on the recipient's monitor or printer for free as they were intended. To view a file in PDF format, you need Adobe Reader, an application distributed by Adobe Systems.

emphasized that in all instances information is required only if material for the particular asset class, sponsor or asset pool involved; disclosure for groups or factors that would not be material is not required. We continue to believe that it is appropriate not to exclude particular asset classes or transactions from the requirements in their entirety. While keeping this general approach, we believe there are ways, nevertheless, to make the static pool information more comparable and facilitate analysis of the information. By requiring issuers to file this information on EDGAR, we do not want to discourage issuers from providing granular data on their Web sites for investors to analyze. We believe that clear summaries and explanation complement the statistical data and allow investors to more easily evaluate material information. To address these concerns, we are proposing to amend our static pool disclosure requirement in several ways to enhance clarity, transparency and comparability. Our proposals cover static pool information for all classes of assets and specific requirements for amortizing trusts.

First, we are proposing to amend Item 1105 to require narrative disclosure describing the static pool information presented. For example, for a pool of RMBS, the disclosure would note the number of assets, types of mortgages (*e.g.,* conventional, home equity, Alt-A, *etc.*) and the number of loans that were exceptions to standardized underwriting criteria. We believe appropriate explanatory information should introduce the characteristics of the static pool. A brief snapshot of the static pool presented would provide investors with context in which to evaluate the information without sophisticated data analysis tools. We do not intend for this requirement to cause issuers to repeat the underlying static pool disclosure; rather the requirement would serve as a clear and brief introduction of the disclosure.

Second, we are proposing to require that issuers describe the methodology used in determining or calculating the characteristics and describe any terms or abbreviations used. Such a requirement would help investors ascertain whether calculations of terms are comparable across issuers. For example, a description of the method used to calculate the loan-to-value ratio could assist investors compare this information across different issuers.

Third, we are proposing to require a description of how the assets in the static pool differ from the pool assets underlying the securities being offered. Again, we believe that a clear and concise description of these differences would provide investors with context in which to evaluate the information without sophisticated data analysis tools.

Finally, if an issuer does not include static pool information or includes disclosure that is intended to serve as alternative static pool information, we are proposing to amend Item 1105(c) to require additional disclosure. As we explained in the 2004 ABS Adopting Release, we did not adopt line-item disclosure requirements for static pool information; however, we noted there may be instances where failure to provide static pool information would make the data that is presented misleading.[377] It is not always obvious why one issuer does not provide static pool information or provides alternative disclosure in lieu of such information, while another issuer within the same asset classes does provide the information. Under our proposal, issuers would be required to explain why they have not included static pool disclosure or why they have provided alternative information. We do not intend for issuers to explain why each of their static pool disclosure points differ from their competitors. However, we believe basic information about the issuer's approach to static pool disclosure would promote transparency and help investors place the disclosure in context.

2. Amortizing Asset Pools

We are proposing additional changes to the static pool disclosure requirements for amortizing asset pools. While the staff has previously noted that the static pool presentation should be governed by the general principles of materiality rather than a specific requirement in Regulation AB,[378] we are concerned that the inconsistency of presentation for delinquencies across issuers within the same asset class has resulted in a lack of clarity and comparability. Accordingly, we are proposing to add an instruction to Item 1105(a)(3)(ii) to require the static pool information related to delinquencies and losses be presented in accordance with the guidelines outlined in Item 1100(b) for amortizing asset pools. Item 1100(b) requires that information be presented in a certain manner—for example, it requires that information regarding delinquency be presented in 30-day increments through the point that assets are written off or charged off as uncollectable. Because information regarding delinquencies and losses, such as number of accounts, dollar amount and percentage of pool, should already be collected in order to report under other Regulation AB item requirements,[379] we believe it should not be overly burdensome for issuers to provide this information, and we believe that static pool disclosure would be improved with this consistent approach.

We also are proposing to amend Item 1105(a)(3)(iv) to require graphical presentation of delinquency, losses and prepayments for amortizing asset pools. We believe many asset-backed issuers already provide graphical illustrations of their static pool data. Depending on the volume and the type of data provided, the static pool data can be difficult to analyze without the use of sophisticated data analysis tools. Static pool information is important for analyzing trends within a sponsor's program by comparing originations at similar points in the asset's lives. In the 2004 ABS Adopting Release, we encouraged issuers to present information in tables or graphs if doing so would aid in the understanding of the data, such as in the sections describing the transfer of the assets, flow of funds, servicing responsibilities, pool asset composition, and periodic performance information including delinquencies.[380] Static pool disclosure has emerged as another disclosure area where graphical presentation appears to be important for an investor's understanding of the overall disclosure. Presentation of the data in this fashion better allows the detection of patterns that may not be evident from overall portfolio numbers and may reveal a more informative picture of material elements of portfolio performance and

[377] For example, for a pool with a material concentration of seasoned assets, disclosure of static pool data about the pool itself may be necessary depending on whether such data would reveal a trend or pattern concerning one or more elements of pool performance and risk that is material and not evident from data relating to asset performance otherwise presented and such omission makes the information presented misleading. *See, e.g.,* Securities Act Rule 408; Securities Act Sections 11, 12(a)(2) and 17(a); Exchange Act Section 10(b); Exchange Act Rule 10b–5; and Exchange Act Rule 12b–20.

[378] Item 1105 states that static pool information, including static pool information regarding delinquencies, is required unless it is not material. As a result, the presentation of static pool information is governed by general principles of materiality and the requirements of Item 1105 and not the requirements of Item 1100(b). Regulation AB Interpretation No. 5.03 in SEC Division of Corporation Finance Manual of Publicly Available Telephone Interpretations.

[379] Item 1111(c) of Regulation AB would require presentation of delinquency in accordance with Item 1100(b).

[380] *See* Items 1100(b), 1107(h), 1108(a)(1), 1111, 1113(a)(2) and 1121(a) of Regulation AB. [17 CFR 229.1100(b), 1107(h), 1108(a)(1), 1111, 1113(a)(2) and 1121(a)].

risk. Given the wide range of information provided by sponsors of the same asset class, we believe that graphical presentation will provide a more useful snapshot of the underlying granular information. We are proposing to require delinquency, loss and prepayments as specific line item requirements because we believe those are material characteristics applicable across all asset classes and structures and would promote transparency and comparability across issuances by the same sponsor and across sponsors. Although not required by our proposal, we also encourage graphical presentation of any other material terms.

3. Revolving Asset Master Trusts

Other than our proposals discussed above intended to apply to all issuers of asset classes and structures, we are not proposing specific changes to the static pool disclosure framework for revolving asset master trusts. However, we would like to highlight two areas concerning static pool data and these issuers. First, a practice has developed among revolving asset master trust issuers to aggregate the static pool data in tables or a graphical illustration. We believe this approach facilitates investor understanding and we encourage issuers to continue this practice.

Second, as we discuss above, we propose changes to the way static pool delinquency information would be reported for amortizing asset pools. For revolving master asset trusts, however, our rules provide a different approach for presenting static pool delinquency disclosure.[381] Commenters on the 2004 ABS Proposing Release argued there could be even more concerns about the "static" nature of the pool for these transaction structures due to changes in the master trust revolving asset pool over time and the relationship between the sponsor's retained portfolio or other securitized pools previously established by the sponsor and the master trust asset pool.[382] In response to these comments, additional incremental performance information based on asset age, or origination year, for the revolving asset pool in the master trust was adopted as an appropriate starting point. As we discussed in the 2004 ABS Adopting Release, this starting point allows an investor to distinguish performance of newer accounts comprising the master trust pool from those of more seasoned accounts.[383] Because the static pool disclosure requirement for master trusts is different from amortizing pools, we are not proposing changes to require that static pool information for revolving asset master trusts be provided in accordance with Item 1100(b) of Regulation AB. Furthermore, if our proposed amendments to Item 1121(b)(9) are adopted, all issuers, including revolving master trusts, would have to present delinquency and loss information in accordance with Item 1100(b) to satisfy the proposed periodic reporting requirement.[384] Therefore, we believe that investors would receive continuing performance data on the master trust pool, similar to the static pool data provided to investors in amortizing asset pools, because revolving asset master trust registrants would continuously report delinquency, prepayment and loss information on the pool assets through periodic reporting on Form 10–D.

Request for Comment

- Should we adopt the changes to Item 1105 for all types of issuers (instead of only amortizing asset pools, as proposed) to require narrative disclosure of the static pool information presented, require the methodology used in determining or calculating the characteristics, and terms, and a description of how the assets in the static pool differ from the pool assets underlying the securities being offered? Would these changes help investors evaluate static pool data?
- Should we require all issuers to provide static pool data, whether or not material?
- Should static pool delinquency and loss information for amortizing asset pools be required to be presented in accordance with the standards in Item 1100(b)? If not, why not? Consistent with 1100(b), should delinquencies be presented through charge-off or some other shorter period of time?
- We are proposing to require graphical presentation of delinquency, losses and prepayments for amortizing asset pools. Is this appropriate? Should we also require graphical presentation for other specific characteristics? Should we require graphical presentation of static pool information for revolving asset master trusts?
- Should we require that static pool delinquency and loss information for revolving asset master trusts be presented in accordance with the standards in Item 1100(b)? If so, please also explain why the same information would not be reported by the registrant on a periodic basis on Form 10–D.
- Should static pool data be required in an offering if there is an ongoing reporting requirement of asset-level data applicable to other pools of the sponsor of the same asset class? Would static pool data be informative even if there is an ongoing duty to report? How would we address issuers registered on Form SF–1 that are not required to provide ongoing information?
- Should revolving asset master trusts continue to use a different starting point for their static pool disclosure? Should we consider any other changes to the static pool requirement for revolving asset master trusts? If so, why? Are there other starting points more appropriate for other asset classes or structures? Should we require asset specific static pool data?
- Should we specify that issuers of ABS backed by credit cards and charge cards need to provide static pool disclosure of delinquencies, monthly payment rates and losses by both vintage origination year and by credit score?[385] Would it be useful for investors? Why or why not?
- Typically, ABS backed by dealer floorplan receivables are structured as revolving asset master trusts. Some do not appear to present static pool disclosure for revolving asset master trusts in the manner specified in Item 1105(b). Should we provide an alternative starting point for revolving asset master trusts backed by dealer floorplans? If so, why?
- Are there other changes we should make to the static pool disclosure requirement to make the information more useful and comparable across issuers?

4. Filing Static Pool Data

We are proposing to require all static pool information be filed on EDGAR by amending Rule 312 of Regulation S–T. We are also proposing to permit static pool disclosure to be filed on EDGAR in PDF format as an official filing.[386] As noted above, currently Rule 312 permits but does not require an asset-backed issuer to post the static pool information required by Item 1105 on an Internet Web site, rather than file the information with the prospectus on EDGAR, if certain conditions are met. Since the adoption of Rule 312 in December 2004, technological advances and expanded use of the Internet have enabled the Commission to adopt additional rules incorporating electronic

[381] 17 CFR 229.1105(b).

[382] *See, e.g.,* comment letter from ASF.

[383] *See* Section III.B.4.a.ii. of the 2004 ABS Adopting Release.

[384] *See* our proposal to revise Item 1121(b)(9) discussed in Section V.A.

[385] *See e.g.,* Appendix A, Attachment IV of the MetLife FDIC Letter.

[386] Currently, filers may submit documents on EDGAR in PDF format, however such documents are unofficial copies. *See* Rule 104 of Regulation S–T [17 CFR 232.104].

communications. The Commission continues to recognize that, in certain circumstances and under certain conditions, the Internet can present a cost-effective alternative or supplement to traditional disclosure methods.[387]

As discussed above, we extended Rule 312 until December 31, 2010 so that the staff could continue to explore whether a filing mechanism for static pool information on EDGAR would be feasible. We received three comment letters to the Static Pool Extension Proposing Release that addressed the proposed extension.[388] Two commenters supported the extension. One of these commenters expressed a strong preference among both its issuer and investor members for Web-based presentation of static pool information due to its efficiency, utility and effectiveness and the current lack of an adequate filing alternative.[389] The other commenter expressed its belief that the accommodation has been highly successful and of great value to investors.[390] A third commenter that did not support the extension believed that the Commission should require structured disclosure using an industry standard computer language.[391]

For the reasons discussed below, we continue to believe it is preferable to have the disclosure filed with the Commission on EDGAR, and we are proposing to permit as an alternative to ASCII or HTML that the static pool information could be filed as a PDF. Filing on EDGAR would preserve continuous access to the information if a Web site is not maintained, for example, due to distress in the market or if the sponsor ceases operations.[392]

In addition, filing the disclosure on EDGAR will ensure that the data provided at the time of each offering is preserved. Some issuers have used the same Web site to centralize static pool data as well as ongoing performance data for their prior securitized pools. In the case of static pool data, updating without indicating or preserving data delivered at the time of each offering makes it difficult to determine what material was part of the prospectus.[393] While we do not want to discourage issuers from providing updated information, we believe it is important to be able to identify which information was provided at the time of the offering. Requiring filing on EDGAR would address that concern.

We also note that most of the static pool information posted on the Web sites has been provided in PDF format. In response to the Regulation AB Proposing Release, commenters argued that a Web site-based approach could provide greater dynamic functionality and utility both for the ability of issuers to present the information and the ability of investors to access and analyze the information, including interactive facilities for organizing and viewing the information.[394] While we encourage issuers to provide the data on their Web sites so that investors may take advantage of those capabilities, we believe it should be filed on EDGAR to centralize and preserve the disclosure provided at the time of the offering. Instead, we are proposing to permit the information be filed on EDGAR in PDF as an official filing. Providing the information on EDGAR also would address the concern of providing a single place for investors to retrieve all information for the offering.

We received comment at the time of the Static Pool Extension release that much of the information for prior securitized pools or the sponsor's portfolio would be similar from one transaction to the next, and a Web site would provide flexibility to allow the information to be presented in one place for multiple prospectuses, therefore, reducing the burdens of repeating the data for each prospectus.[395] However, we believe our proposal to require filing static pool disclosure on EDGAR will not pose a burden on issuers because, as we noted above, most issuers already provide static pool disclosure as PDF documents on their Web sites. And, as is the case today, our rules would allow incorporation by reference of previously filed disclosure into the prospectus for the related issuance.[396] Therefore, we are proposing to revise Rule 312 to remove the temporary accommodation set to expire on December 31, 2010 for asset-backed issuers to post the static pool information required by Item 1105 on an Internet Web site under conditions set forth in Regulation AB.

In addition, in lieu of providing the static pool information in the form of prospectus or in the prospectus for the offering, we are proposing to allow issuers to file the disclosure on Form 8–K and incorporate it by reference. In the prospectus, issuers would need to identify the Form or report on which the static information was filed by including the CIK number, file number and the date on which the static pool information was filed. We believe that this accommodation would allow more flexibility for issuers to provide static pool information and would allow users to easily search and locate static pool disclosure on EDGAR. Such information would be filed with the Form 8–K on the same date that the form of prospectus is required to be filed under proposed new Rule 424(h) and incorporated by reference into the prospectus. We are proposing to amend Form 8–K and Item 601 to add a new item requirement that would identify filings made to include static pool information.

Request for Comment

- Would our proposal to allow static pool data to be filed in PDF on EDGAR accommodate the interests of market participants? Would another format be more appropriate? What should we consider in adopting a format? What

[387] *See, e.g., Internet Availability of Proxy Materials,* Release No. 34–55146 (Jan. 22, 2007) [72 FR 4148] (adopting release for voluntary E–Proxy rules) and *Internet Availability of Proxy Materials,* Release No. 34–52926 (Dec. 8, 2005) [70 FR 74598] (proposing release for voluntary E–Proxy rules). *See also Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies,* Release No. 33–8998 (Jan. 13, 2009) [74 FR 4546] at Section III.A.4.c (adopting Item 11(g)(2) of Form N–1A under the Investment Company Act of 1940 which allows exchange-traded funds to provide premium/discount information on a Web site rather than in a prospectus or annual report) and Section VI.B.1 of the Offering Reform Release (adopting "access equals delivery" model for final prospectus delivery).

[388] The public comments we received are available online at *http://www.sec.gov/comments/s7-23-09/s72309.shtml.*

[389] *See* letter from the American Securitization Forum ("ASF").

[390] *See* letter from the Committee on Federal Regulation of Securities and the Committee on Securitization and Structured Finance of the Section of Business Law of the American Bar Association (the "ABA Committees").

[391] *See* letter from Paul Wilkinson.

[392] Rule 312 of Regulation S–T [17 CFR 232.312] currently requires that the static pool information remain posted on an unrestricted Web site free of charge for a period of not less than five years. The registrant has to retain all versions of the information provided on the Web site for a period of not less than five years. The corresponding undertaking makes clear that information provided on the Web site pursuant to Rule 312 is deemed to be part of the prospectus included in the registration statement. As we indicated in the 2004 ABS Adopting Release, if the conditions of Rule 312 are satisfied, then the information will be deemed to be part of the prospectus included in the registration statement and thus subject to all liability provisions applicable to prospectuses and registration statements, including Section 11 of the Securities Act.Section III.B.4.b. of the 2004 ABS Adopting Release.

[393] When we adopted Rule 312, we attempted to address this concern by requiring the registrant to indicate whether any changes or updates have been made.

[394] *See, e.g.,* letters of ABA, ASF, AutoGroup, BMA, Citigroup, JPMorganChase, NYCBA, and TMCC on the 2004 ABS Proposing Release.

[395] *See* letter from ASF received on Static Pool Extension Release.

[396] *See* Instructions to proposed Forms SF–1 and SF–3. See also Item 10(d) of Regulation S–K (17 CFR 229.10(d)), Rule 303 of Regulation S–T (17 CFR 232.303), Rule 411 of Regulation C (17 CFR 230.411), and Rules 12b–23 and 12b–32 under the Exchange Act (17 CFR 240.12b–23 and 17 CFR 240.12b–32).

should we do in the interim? What format would provide the easiest way for users to search and find static pool data on EDGAR?

• Could PDF documents be prepared in a way that would facilitate conversion of data into a useable format? We solicit comment as to whether some other format would be an appropriate method to file static pool data on EDGAR for all market participants. Would the data need to be tagged? If so, what would be the appropriate tagging?

• Are there any other changes we should consider making to Rule 312 of Regulation S–T?

• We are proposing to allow, but not require, registrants to file static pool information on Form 8–K and incorporate it by reference into the prospectus, in lieu of filing it in the prospectus. Is this accommodation appropriate? Should we instead require that all static pool disclosure be filed in the prospectus?

F. Exhibit Filing Requirements

In the 2004 ABS Adopting Release, we stated that, consistent with Item 601 of Regulation S–K, governing documents and material agreements for an ABS offering such as the pooling and servicing agreement,[397] the indenture and related documents must be filed as an exhibit.[398] Item 1100(f) of Regulation AB allows ABS issuers to file agreements or other documents as exhibits on Form 8–K and, in the case of offerings on Form S–3, incorporate the exhibits by reference instead of filing a post-effective amendment. In the staff's experience with the filing of these documents, ABS issuers have delayed filing such material agreements with the Commission until several days or even weeks after the offering of securities off of a shelf registration statement.

These transaction agreements and other documents provide important information on the terms of the transactions, representations and warranties about the assets, servicing terms, and many other rights that would be material to an investor. As noted above, investors have expressed concerns regarding the timeliness of information in ABS offerings, and we believe that the information in the exhibits is an important part of the overall information package to investors. We are proposing to revise Item 1100(f) of Regulation AB to explicitly state that the exhibits filed with respect to an ABS offering registered on Form SF–3 must be on file and made part of the registration statement at the latest by the date the final prospectus is required to be filed pursuant to Rule 424.[399] ABS shelf offerings were designed to mirror non-shelf offerings in terms of filing exhibits and final prospectuses. All exhibits to Form S–1 must be filed by the time of effectiveness. Consistent with these requirements, under our proposed amendments, exhibits must be on file by the date of filing the final prospectus, upon which a new effective date for the registration statement is triggered.[400]

Request for Comment

• Is our proposed amendment to Item 1100(f) appropriate? Is there any reason that exhibits to the registration statement could not be filed by the time the final prospectus is required to be filed under Rule 424?

• Do investors need the complete exhibits sooner? Is it appropriate instead to require filing at the time of filing the Rule 424(h) filing? Could issuers satisfy such a requirement? Should a draft of each material agreement be required to be filed at that time if the final agreement is not available then?

G. Other Disclosure Requirements That Rely on Credit Ratings

Items 1112 and 1114 of Regulation AB require the disclosure of certain financial information regarding significant obligors of an asset pool and significant credit enhancement providers relating to a class of asset-backed securities. An instruction to Item 1112(b) provides that no financial information regarding a significant obligor, however, is required if the obligations of the significant obligor, as they relate to the pool assets, are backed by the full faith and credit of a foreign government and the pool assets are securities that are rated investment grade by an NRSRO.[401] Item 1114 of Regulation AB contains a similar instruction that relieves an issuer of the obligation to provide financial information when the obligations of the credit enhancement provider are backed by a foreign government and the enhancement provider has an investment grade rating.[402] Under both Items 1112 and 1114, to the extent that pool assets are not investment grade securities, information required by paragraph (5) of Schedule B of the Securities Act may be provided in lieu of the required financial information.[403]

In the 2008 Proposing Release, we proposed to revise Item 1112 and Item 1114 of Regulation AB to remove references to credit ratings.[404] We proposed to revise the instructions to these items so that exceptions based on investment grade ratings to the requirements of Items 1112 and 1114 of Regulation AB would no longer apply, and information required by paragraph (5) of Schedule B would be required in all situations when the obligations of a significant obligor are backed by the full faith and credit of a foreign government. We received one comment on the proposed change that supported the amendments, although the commenter noted its general opposition to the 2008 shelf eligibility proposals for ABS offerings.[405]

We are proposing again to eliminate the exceptions based on investment grade ratings. We are not aware of any benchmark comparable to an investment grade rating here, and we continue to believe the information would be readily available and therefore the proposed change would not impose substantial costs or burdens to an ABS issuer. We believe that these changes are consistent with our revisions to eliminate ratings from the shelf eligibility criteria for asset-backed issuers.

Request for Comment

• Is it appropriate to require the information about foreign government issuers, even if their securities are rated

[397] We stated that the management or administration agreement for the issuing entity also must be filed in addition to describing their material terms in the prospectus. *See* Section III.B.3.c of the 2004 ABS Adopting Release.

[398] *See* Sections III.A.3.b, III.B.3.c. and III.B.3.d of the 2004 ABS Adopting Release. Also, issuers are reminded that any attachments or schedules to an exhibit which is required to be filed pursuant to Item 601 of Regulation S–K must also be filed with the Commission.

[399] Finalized agreements at the time of the offering may be filed in preliminary form as provided by Instruction 1 to Item 601 of Regulation S–K. The filing requirement for an exhibit (other than opinions and consents) may be satisfied by filing the final form of the document to be used; the final form must be complete, except that prices, signatures and similar matters may be omitted. Such exhibits may not be incorporated by reference into any subsequent filing made with the Commission. *See Elimination of Certain Pricing Amendments and Revision of Prospectus Filing Procedures,* Release No. 33–6714 (June 5, 1987) [52 FR 21252].

[400] We note that this filing date will be after the time of sale of the security for purposes of Rule 159 and Securities Act Section 12(a)(2). The documents should be fully described in the prospectus because information conveyed to the investor after the time of sale will not be taken into account for purposes of Section 12(a)(2) of the Securities Act. *See* Rule 159.

[401] Instruction 2 to Item 1112(b) of Regulation AB [17 CFR 229.1112(b)].

[402] Instruction 3 to Item 1114 [17 CFR 230.1114].

[403] Paragraph 5 of Schedule B requires disclosure of three years of the issuer's receipts and expenditures classified by purpose in such detail and form as the Commission prescribes.

[404] *See* Section II.B.4.c of the 2008 Proposing Release.

[405] *See* comment letter from ASF.

investment grade, as proposed? Is there a different way to replace investment grade ratings in Items 1112 and 1114 of Regulation AB?

- Would the proposed change impose undue burdens on issuers?
- Would the disclosure be useful to investors?

IV. Definition of an Asset-Backed Security

As part of our effort to provide more timely and detailed disclosure regarding the pool assets to investors, we are proposing revisions to the Regulation AB definition of an asset-backed security. Currently, a security must meet the definition of an "asset-backed security" under Regulation AB [406] in order to utilize the disclosure requirements of Regulation AB and be eligible for shelf registration on Form S–3.[407] Prior to 2004, an "asset-backed security" was defined only for purposes of Form S–3 eligibility. In 2004, the Commission incorporated the basic definition of an "asset-backed security" from Form S–3 into Regulation AB. This definition requires, among other things, that the security be primarily serviced by the cash flows of a discrete pool of assets.[408]

In the 2004 ABS Adopting Release, we noted that the definition of "asset-backed security" outlines the parameters for the types of securities that are appropriate for the alternate disclosure and regulatory regime provided by Regulation AB.[409] We also noted that the further a security deviates from the core purpose of the definition, the more acute the concerns, which include concerns regarding the sufficiency of disclosure to investors, are that the security should not be treated in the same way as other securities that meet the definition.[410] If a security does not meet the definition under Regulation AB, the offering may still be registered with the Commission on Form S–1. As noted in the 2004 ABS Adopting Release, the staff has worked with issuers offering structured securities outside the Regulation AB definition of an asset-backed security to develop appropriate disclosures under our regulations for such securities.[411]

A core principle of the Regulation AB definition of an asset-backed security is that the security is backed by a discrete pool of assets that by their terms convert into cash, with a general absence of active pool management. However, in response to commenters and previous staff interpretation, we adopted certain exceptions to the "discrete pool" requirement in the definition of asset-backed security to accommodate master trusts, prefunding periods, and revolving periods.[412] Based on our experience with the definition, we are concerned that pools that are not sufficiently developed at the time of an offering to fit within the ABS disclosure regime may, nonetheless, qualify for ABS treatment, which may result in investors not receiving appropriate information about the securities being offered.[413] Consequently, we are proposing amendments to these exceptions to address these concerns. We believe that our proposals would restrict deviations from the discrete pool of assets requirements without substantially changing market practice.[414]

First, we are proposing to carve back the availability of the exceptions to the discrete pool requirement. We are proposing to amend the master trust exception for securities that are not backed by assets that arise out of revolving accounts.[415] Under the existing requirement, securitizations that are not backed by such revolving account assets—for example, mortgages—qualify for an exception from the discrete pool requirement of the definition of an asset-backed security. As a result, additional assets that are non-revolving can be added to the pool of assets backing all the securities issued by the master trust in connection with subsequent offerings of securities. While we do not believe that it is important to repeal the accommodations for revolving assets under Regulation AB, we also do not believe that there is a similar need to accommodate an exception to the discrete pool requirement for offerings backed by non-revolving assets. In light of concerns, which we have noted above, about sufficient disclosure about the pool assets, we are proposing to revise the definition of an asset-backed security to restrict the use of Regulation AB for master trust issuers backed by non-revolving assets. Under our proposed revision, if the master trust is not supported by assets arising out of revolving accounts, the securitization would no longer qualify for the exception.[416] We believe that it is appropriate to carve back on the expansion of the definition of an asset-backed security that was provided in 2004 [417] so that investors have sufficient information relating to the pool assets.[418]

Second, we are proposing to limit further the number of years for revolving periods of non-revolving assets. The current provision allows the offering to contemplate a revolving period where cash flows from the pool assets may be used to acquire additional pool assets, provided, that for securities backed by non-revolving assets, the revolving period does not extend for more than three years from the date of issuance of the securities and the additional pool assets are of the same general character as the original pool assets.[419] We are proposing to reduce the permissible duration of the revolving period from three years to one year.[420] While we have not experienced

[406] *See* Item 1101(c) of Regulation AB.

[407] *See* General Instruction I.B.5 of Form S–3 and Item 1100 of Regulation AB.

[408] *See* Item 1101(c).

[409] *See* Section III.A.2.a of the 2004 ABS Adopting Release.

[410] *See id.*

[411] *See* Section III.A.2.a of the 2004 ABS Adopting Release.

[412] *See* Item 1101(c)(3).

[413] Issuers will also need to consider Rule 3a–7 under the Investment Company Act or other applicable exclusions under the Act. The changes we propose today to the definition of ABS in Regulation AB would not in and of themselves change the analysis under the Investment Company Act. As such, securities that would not meet the Regulation AB definition of ABS may be registered on Form S–1.

[414] *See* fn. 418, 420 and 423 below.

[415] *See* discussion of issuers that utilize master trust structures in Section II.C. above.

[416] Some stranded cost securitizations are set up as a series trust or a master trust. As explained in the 2004 ABS Adopting Release, series trusts do not meet the definition of an asset-backed security under Item 1101(c) of Regulation AB. Under our proposed change to the master trust exception, a stranded cost securitization set up as master trust would not be able to issue securities using registration statements filed on Forms SF–1 or SF–3. However, if a stranded cost securitization is structured as a stand alone trust, then such securitization structure should meet the definition of an asset-backed security.

[417] *See* 2004 ABS Adopting Release.

[418] We are aware of only four issuers backed by non-revolving assets that utilize the master trust structure. Some issuers of ABS backed by mortgages originated in the United Kingdom structured as master trusts would not qualify for the exception from the definition of ABS, because the underlying mortgages would not be revolving in nature. Under our proposal, such structures would still be able to register transactions on Form S–1. Such sponsors would also be able to structure their ABS as stand-alone trusts. *See* Fitch Ratings Report "Masters of the House—A Review of UK RMBS Master Trusts", June 8, 2005 (noting that large prime mortgage lenders have preferred the master trust structure over the pass-through mechanism used by other UK RMBS issuers in, for example, buy-to-let and non-conforming markets, as the master trust structure allows for larger transactions)]. *See* Jennifer Hughes, MBS Market Reopens in Old Style, Financial Times, October 28, 2009 (noting that because new loans are added to the existing collateral pool when new bonds are issued, the performance statistics of the older loans are diluted by the new loans). *See also* Jennifer Hughes, *Concern Over Mortgage Master Trusts,* Financial Times, October 28, 2009 (noting difficulties with analyzing master trusts because the pool of loans backing the bonds is constantly changing).

[419] *See* Item 1101(c)(3)(iii).

[420] We believe that currently the revolving period exception to the discrete pool requirement is not

Continued

problems with the use of this feature to date, we believe that a one-year revolving period limit would help to better ensure that investors have sufficient information about their securities by limiting the amount of time that assets may be added to the pool.

Third, we are proposing to decrease the limit on the amount of prefunding permitted by the prefunding exception to the discrete pool requirement. During prefunding periods, pool assets may be added within a specified period of time after the issuance of the asset-backed securities using a portion of the offering proceeds. Under the existing requirement, the amount of prefunding may not exceed 50% of the offering proceeds, or, in the case of master trusts, 50% of the aggregate principal balance of the total asset pool whose cash flows support the asset-backed securities.[421] We propose to lower this ceiling to 10% of the offering proceeds or, for master trusts, 10% of the aggregate principal balance of the total asset pool whose cash flows support the asset-backed securities.[422] We believe that the combination of shortening the revolving period and lowering the ceiling of prefunding, as proposed, should better align the offerings that use these features with our goal of maintaining the integrity of the discrete pool requirement in offerings that use these features, consistent with investor demand for more meaningful asset-level data.[423]

Requests for Comment

- Is the proposed revision relating to master trusts not backed by revolving account assets appropriate? Are there any asset classes or types of ABS issuers that would be excluded from the revised definition of an asset-backed security that should not be?
- Is it appropriate for ABS structured as master trusts that are backed by non-revolving accounts to register on S–1? How would existing and prospective investors be able to analyze the pool if it is constantly changing? Please be specific in your response.
- Is 10% the appropriate ceiling for the amount of permissible prefunding? Should that amount be higher (*e.g.,* 20%, 30%, 40%), lower (*e.g.,* five percent), or disallowed altogether under the definition of an asset-backed security? Under the existing definition, the duration of the prefunding period is limited to one year from the date of issuance of the asset-backed securities. Should the one-year limitation be shortened?
- Is the one-year permissible length of the revolving period for non-revolving assets, as proposed, the appropriate amount of time? Should the permissible length be a different amount of time (*e.g.,* two years)? Should any other amendments be made to the allowance for revolving periods?

V. Exchange Act Reporting Proposals

A. Distribution Reports on Form 10–D

We are proposing to revise General Instruction C.3. of Exchange Act Form 10–D. The instruction provides that if information required by an Item has been previously reported, the Form 10–D does not need to repeat the information.[424] Because information that is previously reported may relate to a different issuer from the issuer to which the report relates, such information may be difficult to locate, and therefore, we believe a clear reference to the location of the previously reported information should be provided in the Form 10–D.[425] We are proposing to amend Form 10–D to require disclosure of a reference to the Central Index Key number, file number and date of the previously reported information.

We also are proposing to add a new requirement to Item 1121 of Regulation AB to address concerns about the activities of parties obligated to repurchase assets for breach of a representation or warranty in declining trustee or investor demands to repurchase assets from the pool for a possible breach of a representation or warranty.[426] Under this proposed new item requirement, for the assets in the pool backing securities covered by the distribution report, the report would be required to contain disclosure relating to the amount of repurchase demands made of the obligated party during the period covered by this report for the assets in the pool of securities covered by this report.[427] This new item requirement would require disclosure of any demands made of the obligated party in the period covered by the report to repurchase the assets in the pool backing the securities due to a breach in the representations and warranties concerning the pool assets as provided in the transaction agreements. This disclosure would include the percentage of that amount that was not then repurchased or replaced by the originator. Of those assets that were not then repurchased or replaced, we would require disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

In addition, we are proposing to reverse our position for delinquency presentation in periodic reports. In the 2004 ABS Adopting Release, we stated that delinquency and loss information for the Form 10–D reporting period, like the other listed items in Item 1121(a) of Regulation AB, is based on materiality, and not on Item 1100(b) of Regulation AB.[428] Item 1100(b) outlines the minimum requirements for presenting historical delinquency and loss information, such as requiring delinquency experience be presented in 30 or 31 day increments, through the point that assets are written-off or charged-off as uncollectible.[429] Therefore, consistent with our efforts to standardize the disclosure across all ABS, we are proposing to add an instruction to Item 1121(a)(9) to provide pool-level disclosure in periodic reports in accordance with Item 1100(b) of Regulation AB.

Further, we are proposing to revise the cover page of the Form 10–D to include the name and phone number of the person to contact in connection with the filing. This information would assist the staff in its review of asset-backed filings.[430]

widely used in standalone amortizing trust structures. Based on staff review, we believe only a few issuers which have registered with the Commission have used a revolving period of more than one year.

[421] Item 1101(c)(3)(ii).

[422] A current report on Form 8–K would be required to be filed when additions to the pool are made, even if contemplated in the registration statement, as proposed.

[423] Based on staff review, we believe that use of prefunding accounts is generally limited to select sponsors, approximately 25% or less of the principal balance or proceeds are set aside for prefunding and the prefunding period generally extends for approximately one year.

[424] The term "previously reported" is defined in Exchange Act Rule 12b–2 (17 CFR 240.12b–2).

[425] For instance, in the case of master trusts, Item 3 of Form 10–D requires disclosure of information related to the sales of securities backed by the same pool or issuing entity during the reporting period, regardless of whether the transaction is registered. Because the information regarding registered offerings of securities backed by the same pool would have been previously reported by the filing of a prospectus pursuant to Rule 424, no additional report regarding the issuances would be required on Form 10–D. The staff has observed, however, that because the information has been previously reported, no disclosure appears under this item. Thus, it was unclear whether no disclosure was provided because no issuances occurred, or because the information had been previously reported, and also it may not be clear to investors or other market participants how to locate the information.

[426] *See* proposed Item 6A in Part II of Form 10–D.

[427] *See* Section II.B.3.b. above.

[428] *See* fn. 477 of the 2004 ABS Adopting Release.

[429] *See* Item 1100(b)(1) of Regulation AB.

[430] Issuers are also encouraged to provide the name and phone number of the outside attorney or

Request for Comment

• Should we amend, as proposed, Form 10–D to require disclosure of a reference to the Central Index Key number, file number and date of the previously reported information?

• Should we amend, as proposed, Item 1121 to require disclosure regarding the amount of repurchase demands made of the obligated party during the period covered by the report for the assets in the pool of securities covered by the report? Should we require, as proposed, disclosure regarding the percentage of those assets that were subject to a repurchase demand that were not repurchased? Should we also require, as proposed, disclosure whether an opinion of a third party not affiliated with the obligated party had been furnished to the trustee that confirms that the assets that were not repurchased or replaced did not violate a representation or warranty.

• Should we add, as proposed, an instruction to Item 1121(a)(9) to provide pool-level disclosure in periodic reports in accordance with Item 1100(b) of Regulation AB?

• Should we specify the format for reports on Form 10–D? Should we specify line items that issuers must disclose in order to meet the requirements in current Item 1121 of Regulation AB (*e.g.,* disclosure of sources and uses of monthly cash flows, changes in asset pool balance from the beginning to the end of the reporting period)? For instance, in the case of a credit card master trust, should we specify line item disclosure for changes in the assets of the trust (e.g., beginning balance, amount of account additions, amount of accounts withdrawn, amounts collected, gross charge-offs, and ending balance)? [431]

B. Servicer's Assessment of Compliance With Servicing Criteria

The Form 10–K report of an asset-backed issuer is required to contain, among other things, an assessment of compliance with servicing criteria that is set forth in Item 1122 of Regulation AB [432] by each party participating in the servicing function.[433] The servicer's assessment is filed as an exhibit to the report, and the body of the Form 10–K report must also contain disclosure regarding material instances of non-compliance with servicing criteria.[434] In order to provide enhanced information regarding instances of non-compliance with servicing criteria with respect to the offering to which the report relates, including information on steps taken to address non-compliance, we are proposing to expand the disclosure required to be contained in the body of the Form 10–K. We are also proposing to codify certain staff positions with respect to the servicer's assessment, as we believe codifying these positions will make them more transparent and readily available to the public.

A particular servicer may provide servicing for several asset-backed issuers that may not be related. As discussed in the 2004 ABS Adopting Release and in an instruction to Item 1122, the servicer's assessment is required to be made at the platform level,[435] which means the servicer's assessment should be made with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-backed securities covered by the Form 10–K report.[436] Typically, one servicer's assessment relating to several issuers backed by the same type of assets will be filed as an exhibit to each of the issuers' Forms 10–K. Therefore, it may not be clear whether the asset-backed securities covered in the Form 10–K report may have been impacted by the material instance of non-compliance.

In order to elicit disclosure regarding the material instances of non-compliance with respect to the particular securities to which the Form 10–K report relates, we are proposing to require that, along with disclosure of material instances of noncompliance with servicing criteria, the body of the annual report also disclose whether the identified instance of noncompliance involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report.[437]

We are also proposing to require that the body of the annual report discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities made on a platform level. This disclosure would be required whether or not the instance of non-compliance involved the servicing of assets backing the securities covered in the particular Form 10–K. We believe that if a material instance of non-compliance exists at the platform level, investors should know whether any steps have been taken to remedy the material instance of non-compliance.

We also are proposing to codify certain staff positions issued by the Division of Corporation Finance relating to the servicer's assessment requirement, with some modification. First, we are proposing to codify a staff interpretation relating to aggregation and conveyance of information between a servicer and another party (who may also be a servicer for purposes of the servicer's assessment requirement). In the fulfillment of its duties as set forth in transaction agreements, a servicer will often provide information to another party. Such information conveyed is generated by a servicing activity that falls under a particular criterion in Item 1122(d). Likewise, the second servicer may use the information in a servicing activity that falls under a particular criterion in Item 1122(d). While the conveyance of information to another party is not explicitly contained in any of the criterion in Item 1122(d), the staff in the Division of Corporation Finance has taken the position that the accurate conveyance of the information is part of the same servicing criterion

other contact in accompanying correspondence to their reports on Form 10–K.

[431] *See e.g.,* Appendix A, Attachment III. of the MetLife FDIC Letter.

[432] 17 CFR 229.1122.

[433] Exchange Act Rules 13a–18(b) and 15d–18(b) [17 CFR 240.13a–18(b) and 17 CFR 240.15d–18(b)] and Item 1122 of Regulation AB. Item 1122 of Regulation AB defines "a party participating in the servicing function" as any entity (*e.g.,* master servicer, primary servicers, trustees) that is performing activities that address the criteria in paragraph (d) of this section, unless such entity's activities relate only to 5% or less of the pool assets. *See* Instruction 2 to Item 1122. For purposes of this discussion, we refer to the party that is required to provide a servicer's assessment as the "servicer."

[434] *See* Item 1122(c) of Regulation AB. Item 1122 requires an assessment of compliance with servicing criteria exactly as set forth in Item 1122(d); the criteria cannot be modified. If the servicer's process differs from one or more of the criteria, then the servicer must disclose that it is not in compliance with those criteria.

[435] *See* Section III.D.7.c of the 2004 ABS Adopting Release. In contrast, the servicer's compliance statement under Item 1123 of Regulation AB which must be included in a Form 10–K report relates to the specific asset pool for the securitization that is covered by the Form 10–K. Thus, an instance of non-compliance that is not material to the servicer's platform would still need to be disclosed in the servicer's compliance statement under Item 1123 if the instance of non-compliance is material to the servicing of the specific asset pool covered by the report. Further, the issuer is required to disclose a known instance of noncompliance that is material to the asset pool in its Exchange Act reports. *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.05.

[436] *See also* Instruction 1 to Item 1122 (stating that if certain servicing criteria are not applicable to the asserting party based on the activities it performs with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the class of asset-backed securities, the inapplicability of the criteria must be disclosed in that asserting party's and the related registered public accounting firm's reports).

[437] While some information about instances of non-compliance may also be required by Item 1123 of Regulation AB to be provided, because of the differences in the definition of servicer between Item 1122 and Item 1123, we believe that Item 1123 does not cover the same information that our proposed revision to Item 1122 would cover.

under which the activity that generated the information is assessed.[438]

We are now proposing to codify the staff's interpretation; however, unlike the staff's position that the conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed, we are proposing to add a new servicing criterion to Item 1122. This new criterion, as proposed,[439] would state that if information obtained in the course of duty is required by any party or parties in the transaction in order to complete their duties under the transaction agreements, the aggregation of such information, as applicable, is mathematically accurate and the information conveyed accurately reflects the information that was obtained. Any servicer that is responsible for either aggregation or conveyance of information should assess whether there are any instances of noncompliance with respect to such activities that should be reported under the proposed criteria. We are proposing a new criterion because we believe that a separate criterion for the accurate aggregation and conveyance of information to other parties would better elicit disclosure regarding a servicer's compliance with its duties.

In a publicly available telephone interpretation,[440] the staff explained that the platform for reporting purposes should not be artificially designed, but rather, it should mirror the actual servicing practices of the servicer. However, the staff also noted that if in the conduct of servicing the transactions, the servicer has made divisions in its servicing function by geographic locations or among separate computer systems, the servicer may take these factors into account in determining the platform for reporting purposes. Absent changes in circumstances such as a merger between services, we expect that the groupings of transactions included in a platform would remain constant from period to period. Also, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, we expect a description of the scope of the platform would be included in a servicer's report submitted pursuant to Item 1122.

We are proposing to codify these interpretations relating to the scope of the Item 1122 servicer's assessment in an instruction to Item 1122. The proposed instruction also states that the servicer's assessment should cover, except if disclosure is provided as required below, all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The proposed instruction states that the servicer may take into account divisions among transactions that are consistent with the servicer's actual practices. However, if the servicer includes in its platform less than all of the transactions backed by the same asset type that it services, the proposed instruction provides that a description of the scope of the platform should be included in the servicer's assessment.

Request for Comment

- Would additional disclosure in the body of the Form 10–K as to whether the identified instance of noncompliance involved the servicing of the assets backing the asset-backed securities covered in the particular Form 10–K report, as we are proposing to require, provide investors with meaningful additional disclosure that is not already covered by the existing requirements? Would the proposed requirement to disclose any steps taken to remedy the previously identified instances of noncompliance provide helpful information to investors?
- Should we, as proposed, add a separate criterion addressing the accurate aggregation and conveyance of information by one servicer to another party who must use the information in the performance of its duties? Would it be better not to add the criterion but instead revise Item 1122 to provide, similar to the staff's position, that accurate conveyance of the information is part of the same servicing criterion under which the activity that generated the information is assessed? Should timeliness of conveyance of this information also be included as part of the proposed servicing criterion?
- Should we codify prior staff interpretations relating to the scope of Item 1122 by adding the proposed instruction? Does the proposed instruction to Item 1122 reflect current servicer's practices? Do servicers conduct servicing in any ways different from what is contemplated in the proposed instruction?

C. Form 8–K

1. Item 6.05

Item 6.05 of Form 8–K[441] applies to asset-backed securities offerings registered on Form S–3 and, if our proposed amendments are adopted, will apply to offerings registered on Form SF–3. Under the existing item requirement, if any material pool characteristic of the actual asset pool at the time of issuance of the securities differs by five percent or more (other than as a result of the pool assets converting to cash in accordance with their terms) from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424, the issuer must provide certain disclosure regarding the actual asset pool, such as that required by Item 1111 and 1112 of Regulation AB.

In light of the new requirements regarding asset-level disclosure, which reflect the significance of the composition of the assets, we are proposing to revise Item 6.05 of Form 8–K to require that the issuer file a current report with disclosure pursuant to Item 1111 and Item 1112 if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities differs by one percent or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (other than as a result of the pool assets converting into cash in accordance with their terms). We believe that changes below one percent are likely de minimis changes. We believe that except for the assets acquired through prefunding, the assets of the pool underlying the securities should be set and described in the prospectus. For shelf offerings, much of this information would already be provided by means of the Rule 424(h) filing. We remind issuers that information about significant changes in pool asset composition provided to an investor after the sale may not have been adequately conveyed at the time of

[438] *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 11.03. According to the interpretation, the following example demonstrates how the position should be applied:

For example, if Servicer A is responsible for administering the assets of the pool and passing along the aggregated information about the assets in the pool to Servicer B, and Servicer B is responsible for calculating the waterfall or preparing and filing the Exchange Act reports with that information, Servicer A's activity is assessed under Item 1122(d)(4). In addition to assessing Servicer A's maintenance of the records and other activities, this Item requires assessment of Servicer A's aggregation and conveyance of such information to Servicer B. If instead of aggregating the individual asset information, Servicer A conveys it un-aggregated, then Servicer B must include its own aggregation of the individual asset data in Servicer B's assessment of calculating the waterfall or preparing and filing Exchange Act reports.

[439] *See* proposed Item 1122(d)(1)(v) of Regulation AB.

[440] *See* the Division of Corporation Finance's Manual of Publicly Available Interpretations on Regulation AB and Related Rules, Interpretation 17.03.

[441] 17 CFR 249.308.

sale for the purpose of Securities Act Rule 159.[442]

The item, as proposed to be revised, also requires a description of the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.[443] In some transactions, the pooling and servicing agreement may provide for investments of cash collections and reserve funds in "eligible" or "permitted" investments.[444] However, even though investments of cash collections are contemplated at the time of the offering, the investment of cash collections and reserve funds may be a material change to the asset pool. Consequently, disclosure of the change would be required under Item 6.05 of Form 8–K.

Request for Comment

- Should we revise Item 6.05 of Form 8–K as proposed? Is 1% an appropriate threshold to trigger disclosure on Form 8–K? Should it be higher or lower such as 0.5% or 2%?
- Is the language for the proposed item appropriate?
- Should we also require, as proposed, a description of the changes to the asset pool?
- Should we provide by rule that changes in pool assets of more than 10% (or some other amount) from the description of the asset pool in the prospectus filed pursuant to Rule 424 must be conveyed to investors for purposes of Rule 159?
- How often would ABS issuers cross the 1% threshold? We propose, above, to eliminate the current exception to the shelf eligibility condition that requires timely filing of an Item 6.05 Form 8–K. Is there a risk that pool assets may change by more than 1% without the sponsor being aware soon enough that an issuing entity has crossed this threshold in order to be able to comply with the shelf eligibility criteria, as proposed to be revised? If so, how should we address that risk while still providing incentive for timely compliance?

2. Change in Sponsor's Interest in the Securities

We are proposing to add a new item to require the filing of a Form 8–K to describe any material change in the sponsor's interest in the securities. Under this Item, a Form 8–K would be required to be filed if there is a material change in the sponsor's interest in the securities. We believe that such disclosure would assist an investor in monitoring the sponsor's interest in the securities, including its retention of risk in connection with the proposed shelf eligibility requirements discussed above. Under the proposal, the report on Form 8–K would be required to include disclosure of the amount of change in interest and a description of the sponsor's resulting interest in the transaction.

Request for Comment

- Should we require, as proposed, the issuer to file a Form 8–K if there is a material change in the sponsor's interest in the securities? Should we provide a quantitative measure for the trigger for disclosure on Form 8–K? For example, should we require the filing of a Form 8–K if the sponsor's interest has changed by 1%, 5% or 10%?
- Is the proposed disclosure that would be required to be provided on Form 8–K appropriate? Would other types of disclosure provide more useful information for investors?
- Should we also require the issuer to file a Form 8–K if an originator's interest in the securities has changed? If such a requirement were adopted, what would be the costs of monitoring an originator's interest?
- Should we instead require that the issuer file a report each fiscal quarter that discloses the scope of the sponsor's interest in the securities as of a particular date? If so, what date should that be?

D. Central Index Key Numbers for Depositor, Sponsor and Issuing Entity

We are proposing amendments to make it easier for interested parties to locate the depositor's registration statement and periodic reports associated with a particular offering and information related to the sponsor of the offering. Currently, ABS offerings with a particular file number may be associated with a registration statement with a different file number. Further, Forms 8–K for ABS offerings may be filed under the depositor file number, making it difficult to track material for the related offering with only the information provided in the Form 8–K. In order to facilitate the ability of investors to find information that is filed on EDGAR relating to the depositor, the issuing entity and the sponsor more easily, we are proposing to require that the cover pages of registration statements on Form SF–1 and Form SF–3 include the CIK number of the depositor, and if applicable, the CIK number of the sponsor.[445] We are also proposing to require that the cover pages of the Form 10–D, Form 10–K, and Form 8–K for ABS issuers include the CIK number of the depositor and of the issuing entity, and if applicable, the CIK number of the sponsor.

Request for Comment

- Should we require, as proposed, CIK numbers for the depositor, the issuing entity, and the sponsor (if applicable) on the cover pages of Forms 10–K, 10–D and 8–K for ABS issuers? Should we require, as proposed, CIK numbers for the depositor and the sponsor (if applicable) on the cover pages of proposed Forms SF–1 and SF–3?
- Are there any other changes we should make to the forms to make it easier to locate materials related to an ABS offering or ABS issuer?

VI. Privately-Issued Structured Finance Products

We are proposing significant revisions to the safe harbors for exempt offerings and resales of asset-backed securities. In the U.S., all CDO issuances have taken place in the private exempt markets. An offering of CDOs in the private market typically is a two-step process involving an exempt private sale by the issuer to one or more initial purchaser or purchasers[446] under Section 4(2) of the Securities Act[447] immediately followed by a private resale by the initial purchaser or purchasers to eligible investors made in reliance on the Securities Act Rule 144A safe harbor.[448] In addition, while it may not be typically used in the private market for structured finance products, Rule 506[449] of Regulation D[450] provides any issuer, regardless of the type of security it issues, a safe harbor for the Section 4(2) private offering exemption from Securities Act registration.

Securitization in the private, unregistered market played a significant role in the financial crisis. In particular, the CDO market has been cited as

[442] *See* fn. 87 above.

[443] In addition, we are proposing to require that asset data files be included as an exhibit on the same date of the filing of an Item 6.05 Form 8–K. *See* proposed Item 6.06 of Form 8–K.

[444] If those instruments are securities, they must be registered or exempt from registration as provided in Securities Act Rule 190. *See* Section III.a.1.e.v. and fn. 277 above.

[445] *See* proposed revision to Item 1102(a) of Regulation AB.

[446] The initial purchaser is typically a registered broker-dealer.

[447] 15 U.S.C. 77d(2). Section 4(2) provides an exemption from registration for transactions by an issuer not involving any public offering.

[448] *See* Guy Lander, *U.S. Securities Law for International Financial Transactions and Capital Markets, Second Edition,* (Eliot J. Katz *et al.* eds., 2nd ed., Thomson West 2005)(noting that "[t]ogether, Section 4(2) and Rule 144A, in effect, permit 'underwritten' private placements").

[449] 17 CFR 230.506.

[450] 17 CFR 230.501 through 230.508.

central to the crisis.[451] While the CDO market comprised a large part of the capital market at the time of the financial crisis,[452] many have asserted that the lack of information about CDOs and other structured securities in the private market exacerbated the harm to investors and the markets as a whole during the financial crisis.[453] In addition, other market participants and regulators did not have access to important information about this significant component of the capital markets.[454] Further, the costs of information asymmetry for ABS issuances can differ significantly from those incurred in the issuances of most other securities. Asset-backed securities are issued by single purpose issuers whose only business purpose is holding financial assets and may involve numerous parties that participate in the chain of securitization (*i.e.,* originator, sponsor, servicer, *etc.*). Thus, unlike the securities of other companies where information needed to value the securities might be able to be gleaned from a review of basic summary information and discussions with management, information about the assets and the parties in the securitization chain facilitates an understanding of the valuation of asset-backed securities. To address these concerns, we are proposing revisions relating to Rule 144A offerings of structured finance products and Rule 506 of Regulation D to provide for specific disclosures for private offerings of structured finance products, as well as additional public information about private structured finance products offerings conducted in reliance upon these safe harbors.

We acknowledge that the steps we are proposing to take in the private placement market are significant. We recognize that structured finance products issuers may conduct offerings in reliance on a statutory exemption under the Securities Act without seeking the safe harbor provided by Rule 506 of Regulation D or without representing that the securities are eligible for sale under Rule 144A.[455] As a result, our proposed amendments to the safe harbors would not apply to these offerings, and as such, may not fully address the concerns we seek to address in all securitization transactions.

A. Rule 144A and Regulation D

We adopted Securities Act Rule 144A[456] in 1990.[457] The rule provides a safe harbor for a reseller of securities from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act for the offer and sale of non-exchange listed securities to "qualified institutional buyers" (QIBs), as defined in Rule 144A. The Rule 144A safe harbor can be claimed only by persons other than the issuer. The safe harbor has been utilized to develop a private market for collateralized debt obligations and other asset-backed securities[458] that may not meet the definition of an asset-backed security under Regulation AB, and, therefore, are not eligible for the particularized regulation regime of Regulation AB.[459]

One condition of the Rule 144A safe harbor requires the issuer to provide the security holder or a prospective purchaser designated by the security holder, certain information relating to the issuer, which is required to be reasonably current in relation to the date of resale under the rule.[460] To satisfy the rule, the information must be provided upon the security holder's request, or the prospective purchaser must have received such information at or prior to the time of sale, upon the prospective purchaser's request to the security holder or issuer. In the original adopting release for Rule 144A, we noted that this condition had been proposed in response to commenters' concerns regarding the lack of available information about issuers in the exempted transaction.[461]

This information requirement in Rule 144A delineates the type of information that should be provided by corporate issuers.[462] However, there is no discussion in the text of the rule regarding the type of information that is required for ABS offerings. In the original adopting release for Rule 144A, we stated that the information requirements in Rule 144A with respect to asset-backed issuers require, "basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, and any credit mechanism associated with the securities."[463] Under these requirements, purchasers of asset-backed securities in Rule 144A transactions may receive only a minimal

[451] *See* the 2008 CRMPG III Report (noting that many of these securities were high-risk complex financial instruments that were not understood by investors), at 53, and Gillian Tett, *Fools Gold* (2009). *See also* the PWG March 2008 Report, at 9 (discussing subprime mortgages and the write-down of AAA-rated and super-senior tranches of CDOs as contributing factors to the financial crisis).

[452] In 2005, worldwide CDO issuance exceeded $250 billion. *See, e.g.,* Securities Industry and Financial Markets Association, "Global CDO Issuance Data," available at *http://www.sifma.org/research/research.aspx?ID=10806.* According to information that the staff has compiled from AB Alert, available at *www.ABAlert.com,* and SDC, U.S. issued Rule 144A offerings of asset-backed securities totaled approximately $200 billion in 2005 and $160 billion in 2006.

[453] *See* the 2008 CRMPG III Report, at 53 (noting that lack of comprehension of CDOs by market participants resulted in the display of price depreciation and volatility far in excess of levels previously associated with comparably rated securities, causing both a collapse of confidence in a very broad range of structured product ratings and a collapse in liquidity for such products). *See also* the Turner Review, at 16 (describing CDOs and CDO squared as opaque).

[454] *See* testimony of Joseph Mason, "Hearing on the Role of Credit Rating Agencies In the Structured Finance Market," Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services United States House of Representatives (Sept. 27, 2007) (proposing a resolution to information asymmetry for structured finance investments, including CDOs, by changing the manner in which information is gathered by accountants and regulators and disseminated to market participants by ratings agencies and markets). *See also* Anna Katherine Barnett-Hart, *The Story of the CDO Market Meltdown: An Empirical Analysis,* (Mar. 19, 2009) (discussing mis-rating of CDOs and failure of all market participants, from investment banks to hedge funds, to understand risk of CDOs) at 3, 40.

[455] For example, we understand that asset-backed commercial paper is often sold in reliance on the private placement statutory exemption and the so-called Section "4(1-½)" exemption for private resales rather than the safe harbors provided under Rule 506 of Regulation D or Rule 144A.

[456] 17 CFR 230.144A.

[457] *See* the Rule 144A Adopting Release.

[458] For example, a vast majority of resecuritizations of real estate mortgage conduits, known as "Re-Remics," are offered through resales made in reliance on Rule 144A safe harbor. *See* Deloitte's *Speaking of Securitization,* "The Re-Remic Phenomenon" (June 2009), at 2.

[459] Many CDOs do not meet the "discrete pool of assets" component of the Regulation AB definition of an asset-backed security because CDOs permit the active management of the assets for a period of time (e.g., five years), a component which is inconsistent with the principle set forth in Item 1101(c). Also, other structured products like synthetic securities do not meet the definition of an asset-backed security under Regulation AB. *See* Section III.A.2.a. of the 2004 ABS Adopting Release. In addition, actively-managed CDOs and issuers that offer synthetic securities generally do not meet the requirements of Rule 3a–7 under the Investment Company Act and typically rely on one of the private investment company exclusions under that Act. *See* fn. 39 above.

[460] 17 CFR 230.144A(d)(4).

[461] *See* Section II.D. of the Rule 144A Adopting Release.

[462] In particular, the holder or prospective purchaser should be provided with: a statement of the nature of the issuer's business and the products and services that it offers, the issuer's most recent balance sheet and profit and loss and retained earnings statements, and similar financial statements for the part of the two preceding fiscal years as the issuer has been in operation. *See* 17 CFR 230.144A(d)(4)(i). The rule also explains how the issuer's financial statements and other information could be presumed to be "reasonably current." *See* 17 CFR 230.144A(d)(4)(ii).

[463] *See* Section II.D. of the Rule 144A Adopting Release.

amount of information about their investment.

Under the existing provisions in Regulation D, when the issuer sells securities in reliance on Rule 506 to a purchaser that is not an "accredited investor," as defined in Regulation D, an issuer must furnish information akin to what is required in a registration statement on Form S–1.[464] The prescribed information, however, need not be provided to a purchaser that is an accredited investor. Except for a few types of ABS, we believe that investors in privately issued asset-backed securities typically would qualify as accredited investors, and therefore, issuers would not be required to provide the prescribed information to them in order rely on Rule 506 of Regulation D for the sale of the securities. Thus, if an ABS issuer were to rely on Rule 506 of Regulation D for the sale of its securities, purchasers in the offering may receive only a minimal amount of information regarding the securities, though they may request the information that they desire.

B. Proposed Information Requirements for Structured Finance Products

1. General

In order to address concerns about the lack of information available to investors in the private markets for structured finance products, we are proposing amendments to our safe harbors and new related rules regarding the information that must be made available to investors in privately-issued asset-backed securities. In summary, we are proposing to:

- Require that, in order for a reseller of a "structured finance product" to sell a security in reliance on Rule 144A, or in order for an issuer of a "structured finance product" to sell a security in reliance on Rule 506 of Regulation D:
  - The underlying transaction agreement for the securities must grant to purchasers, holders of the securities (or prospective purchasers designated by the holder) the right to obtain from the issuer of such securities the information, upon request, that would be required if the transaction were registered under the Securities Act and such ongoing information as would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section; and
  - The issuer must represent that it will provide such information.
- Conform the informational requirement of Securities Act Rule 144[465] to the above revisions; and
- Add a new Securities Act rule that would require a structured finance product issuer that had represented and covenanted to provide information as proposed to be required by Rule 144, Rule 144A and Rule 506 of Regulation D to provide such information, upon request.

2. Application of Proposals

Our proposals would apply to a "structured finance product," which would be more broadly defined than the Regulation AB Item 1101(c) definition of "asset-backed security" in order to reflect the wide range of securitization products that are sold in the private markets. In addition to traditional "asset-backed securities," the proposed definition of "structured finance product" would cover:

- A synthetic asset-backed security; or
- A fixed-income or other security collateralized by any pool of self-liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables that entitles its holder to receive payments that depend on the cash flow from the assets—including:
  - An asset-backed security as used in Item 1101(c) of Regulation AB (§ 229.1101(c));
  - A collateralized mortgage obligation;
  - A collateralized debt obligation;
  - A collateralized bond obligation;
  - A collateralized debt obligation of asset-backed securities;
  - A collateralized debt obligation of collateralized debt obligations; or
  - A security that at the time of the offering is commonly known as an asset-backed security or a structured finance product.[466]

We believe that the enumerated characteristics in our proposed definition generally distinguish structured finance products from other types of securities. This proposed definition of structured finance product would encompass certain managed asset-backed securities (where a manager is appointed and paid fees to make changes to the collateral or a referenced portfolio). In this proposed definition, there would be no requirement of a discrete pool of assets so as to include CDOs, which are typically managed for some period of time.[467]

3. Information Requirements

We are proposing to condition the safe harbors of Rule 144A and Rule 506 of Regulation D on a requirement that, if the securities offered or sold are structured finance products, an underlying transaction agreement (such as an indenture or servicing agreement) must contain a provision requiring the issuer to provide specified information to any purchaser (and also, in the case of Rule 144A, any security holder or prospective purchaser designated by the security holder).[468] Also, the issuer must represent that it will provide such information upon request. For securities to be eligible for resale under Rule 144A, we would require that an underlying transaction agreement grant any initial purchaser, any security holder or any prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon the request of the purchaser or security holder, information as would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act and any ongoing information regarding the

[464] *See* Rule 502(b)(2) of Regulation D.

[465] 17 CFR 230.144.

[466] This proposed definition is based in part, on the definition of asset-backed security used in the Financial Industry Regulatory Authority (FINRA's) proposal to designate asset-backed securities as eligible for Trade Reporting and Compliance Engine, the vehicle developed by FINRA to facilitate the mandatory reporting of over the counter secondary market transactions. *See Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as modified by Amendment No. 1 Thereto, to Require the Reporting of Transactions in Asset-Backed Securities to TRACE,* Release No. 34–61566 (Feb. 22, 2010)(release approving the rule change that would require the reporting of trading in asset-backed securities to TRACE). Our proposed definition provides some more specificity on the defining characteristics of a structured finance product and, unlike the FINRA proposed definition, includes a security that is commonly known at the time of the offering as an asset-backed security or a structured finance product.

[467] We also believe that any residual tranche of the instrument would be included in the proposed definition. Asset-backed commercial paper is also covered in this definition.

[468] In the original adopting release for Rule 144A, we stated that with respect to mortgage- or other asset-backed securities, since the servicer or trustee, on behalf of the trust or other legal entity, has title to the assets of the trust, they would be deemed to be the "issuer" for purposes of the information requirement in Rule 144A. In a no-action letter, the staff later explained that this language "was not intended in any way to cause the analysis of issuer status under the federal securities laws to be any different for privately placed mortgage-backed or asset-backed securities than public offerings of such securities" but "intended only to identify the party from whom the holder and a prospective purchaser designated by the holder must have the right to obtain the information about the securities and underlying asset pools of the limited purpose financial entity." *See* letter from the Division of Corporation Finance to Kutak Rock & Campbell (Nov. 29, 1990). While we recognize that the servicer or trustee would typically be the party that delivers information to security holders (or prospective purchasers), we intend for our proposed amendment to apply to an issuer of structured finance products (i.e., the depositor as it relates to the issuing entity), consistent with the definition of issuer in Securities Act Rule 191 for ABS purposes.

securities that would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section. For an offering made in reliance on Rule 506 of Regulation D, we would require that an underlying transaction agreement contain a provision granting any purchaser in the Rule 506 offering the right to obtain from the issuer promptly, upon the purchaser's request, information that would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act.

The specific disclosure that would need to be provided to satisfy this condition would vary depending on the type of security offered. For an offering of structured finance products where the securities meet the Regulation AB definition of an asset-backed security, the disclosure requirements of Form SF–1 would apply. For offerings of structured finance products where the securities fall outside the Regulation AB definition, the requirements of Form S–1 would apply. In the latter case, the issuer would be required to provide information required under Regulation AB regarding the assets and parties as well as additional information required under Regulation S–K.[469] For a managed CDO offering, we would expect disclosure regarding the asset and collateral managers, including fees and related party transaction information, their objectives and strategies, any interest that they have retained in the transaction or underlying assets, and substitution, reinvestment and management parameters. For a synthetic CDO offering, we would expect, among other things, disclosure of the differences between the spreads on synthetic assets and the market prices for the assets, the process for obtaining the credit default swap or other synthetic assets, and the internal rate of return to equity if that was a consideration in the structuring of the transaction.

4. Proposed Rule 144 Revisions

In addition, we are proposing to revise Securities Act Rule 144. Rule 144 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. One of the conditions of Rule 144 requires the availability of adequate current public information with respect to the issuer of the securities ("the current public information requirement"). This current public information requirement is only at issue if the seller who is relying on Rule 144 is an affiliate of the issuer.[470] Under Rule 144, affiliates of non-reporting companies may resell securities in reliance on the rule only after the securities have been held for at least one year after purchase and if certain conditions are met, including the current public information requirement.

We are proposing to revise the current public information requirement in Rule 144 for non-reporting issuers of structured finance products. If the securities are structured finance products, and the issuer of the securities is not subject to the reporting requirements of Section 13 or 15(d) of Exchange Act, then in order to satisfy the current public information requirement, two conditions must be satisfied. First, the underlying transaction agreement of the issuer must grant any purchaser, any security holder and any prospective purchaser of the securities designated by the holder the right to obtain, upon request of the purchaser or security holder, information that would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act and any ongoing information regarding the securities that would be required by Section 15(d) of the Exchange Act, if the issuer were required to file reports under that section. Second, the issuer must have represented that it would provide such information to the purchaser, security holder, or prospective purchaser, upon request of the purchaser or security holder.

5. New Rule 192 of the Securities Act

We are proposing new Rule 192 to require an issuer of privately-issued structured finance products to provide, upon the investors' request, information as would be required if the transaction were registered (or ongoing information). If an issuer of structured finance products has represented and covenanted to provide such offering information in order to rely on Rule 506 of Regulation D or has represented and covenanted to provide both offering or ongoing information pursuant to the proposed new provision of Rule 144A or Rule 144, then the issuer must provide such information, upon request of the purchaser or security holder. Recent events have shown the importance of structured finance product issuers complying with a representation to provide initial and ongoing information to security holders and prospective purchasers.[471] In making investment decisions, ABS investors should be able to rely on the continued availability of information to themselves and prospective purchasers as a prophylactic measure against the possibility of fraud. Indeed, failure to provide such information upon request may constitute a fraud in the offer of securities.[472] Thus, the Commission could bring an enforcement action under this rule against an issuer that failed to provide the required information.

The obligation to provide information under proposed new Rule 192 would not be a condition of the Rule 144, Rule 144A, or Regulation D safe harbors. As proposed new conditions of the safe harbors for structured finance products, the underlying transaction agreements must contain the specified representations and covenants to provide information. If the issuer does not include the representation and covenant, it would have failed to satisfy the safe harbor and may not be entitled to the exemption under Sections 4(1) or 4(2), as applicable. If, on the other hand, the transaction agreements contain the representation and covenant but the issuer fails to provide, for example,

[469] *See* Section III.A.2.a of the 2004 ABS Adopting Release (discussing structured securities that do not meet the Regulation AB definition of an asset-backed security and noting "[d]epending on the structure of the transaction and the terms of the securities, some disclosure aspects of Regulation AB may be applicable, but aspects from the traditional disclosure regime also may be applicable. In some instances, a third approach might be more appropriate"). Material information that is required by Regulation S–K would be required but not all of the item requirements in Regulation S–K may be applicable to the issuer.

[470] *See Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates,* Release No. 33–8813 (June 20, 1997)[72 FR 36822](adopting release shortening holding period and amending other Rule 144 conditions). Prior to 2007, non-affiliates of the issuer relying on the rule for the resale of securities were subject to the current public information requirement after holding the securities for one year. Since 2007, non-affiliates of a non-reporting issuer who satisfy a one-year holding period requirement are no longer required to comply as a condition to reliance on Rule 144 with the current public information requirement.

[471] *See* Gary Gorton, *Slapped in the Face by the Invisible Hand: Banking and the Panic of 2007,* May 9, 2009, prepared for the Federal Reserve Bank of Atlanta's 2009 Financial Markets Conference: Financial Innovation and Crisis (noting that at a crucial point in the financial crisis, lack of information regarding some securities greatly exacerbated the situation).

[472] Securities Act Section 17(a) contains the general antifraud prohibitions applicable in the offer or sale of securities. In particular, Section 17(a)(3) (15 U.S.C. 77q(a)(3)) states that it shall be unlawful for any person in the offer or sale of any securities or any security-based swap agreement by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser. The Supreme Court has held that Section 17(a)(3) does not require a finding of scienter. *Aaron v. SEC,* 446 U.S. 680 (1980).

some of the information to a security holder or prospective purchaser, upon their request, that failure, in and of itself, would not mean the conditions of the safe harbor would not have been met. We have concerns that a potential claim arising under Section 5 of the Securities Act may not be the appropriate remedy under these circumstances but believe it appropriate that there be regulatory consequences. Investors should nevertheless be able to take appropriate action under those transaction agreements regarding the provision of information and the Commission could bring an action for violation of Rule 192.

Request for Comment

• We recognize that our proposals would impose significant changes to the existing requirements in the safe harbors for private offers, sales and resales of structured finance products, and we request comment on all aspects of our proposed approach. This will be the first time, for example, that we would require an undertaking to provide information to accredited investors as a condition to the safe harbor in Rule 506 of Regulation D, and the first time we would require an undertaking to provide such specific information to QIBs in Rule 144A transactions. While we recognize that the proposals may impose substantial additional requirements on ABS issuers in the private market, we believe that, if adopted, these proposals would help to provide needed transparency in the private markets for structured finance products. As a practical matter, how feasible will an exempt private offering be in light of the requirements? Is the rationale offered for distinguishing ABS from other securities for purposes of our proposal appropriate?

• We request comment on the proposed definition of "structured finance products" for purposes of our proposed revisions to Rule 144A, Regulation D and other rules. Is the proposed definition appropriate? Should other types of securities be included that are not included? Should any types of included securities not be?

• Is it appropriate to require, as proposed, that as a condition of Rule 144A, the transaction agreements contain a provision that would require an issuer of structured finance products to provide to investors promptly, upon investors' request, such information that would be required if the offering were registered on Forms S–1 or SF–1 and any ongoing information regarding the securities as would be required by Section 15(d) of the Exchange Act if the issuer were required to file reports under that section? Is it appropriate to require, as proposed, the same requirement as a condition of Rule 506 of Regulation D for sales to accredited investors?

• Should we require instead that, as a condition of Rule 144A, issuers make the required information (both offering and ongoing information) available at all times, rather than only upon investor's request? Could an issuer, for example, be required to post the information on a password-protected Web site?

• Is new Rule 192 appropriate? Should we require, as a matter of federal securities law, that an issuer of structured finance products that has represented and covenanted to provide information pursuant to the safe harbors under Rule 144A, Regulation D, or Rule 144 provide such information?

• Should we provide more specificity in the rules covering what disclosure would be required to be provided? If so, what types of disclosure should we specifically require? Should the required disclosures differ by type of security? If so, in what way?

• Are our proposals with respect to ongoing information regarding the securities appropriate? Is there any reason that we should not require structured finance product issuers that utilize the safe harbors to comply with the proposed requirements for ongoing information?

• Is our proposed approach of requiring the transaction agreements to contain a provision requiring the issuer to provide information upon request appropriate? Should we instead condition the availability of the safe harbors of Rule 144A and Regulation D on the actual provision of the information if the securities sold are structured finance products? Would that approach have a chilling effect on the private markets if not providing some of the information required under our revised rule might raise the possibility of a Section 5 violation, with the resultant rescission right under Section 12(a)(1)? If so, should we address that potential concern by providing that no failure to provide information as required solely under such a provision of Rule 144A would result in a loss of the safe harbor for purposes of Section 12(a)(1) liability as long as the other conditions of Rule 144A are satisfied and basic material information concerning the securities is provided, including information regarding the structure of the securities, distributions on the securities, nature, performance and servicing of the assets, and any credit enhancements? Such an approach would be designed to enable the Commission to bring an action, if appropriate, based on Section 5 if the required information were not provided while limiting litigation by a purchaser seeking to rescind the transaction to situations where there was a significant failure to provide basic information. By contrast, is it necessary or appropriate to rely on the possibility of a rescission right to foster compliance with the proposed information requirements?

• Are our proposed amendments to Rule 506 of Regulation D appropriate? Should we require, as proposed, that information regarding structured finance products be provided to any purchaser, regardless of whether the purchaser meets the definition of an accredited investor?

• Should our proposed conditions apply to offerings made pursuant to Rule 505, which are made under the Securities Act Section 3(b) exemption from registration rather than Section 4(2)? How likely would it be for issuers of structured finance products to conduct Rule 505 offerings?

• Instead of amending Rule 506, should we adopt a new Regulation D safe harbor just for structured finance products? Since it appears that issuers of structured finance products have relied on the statutory private placement exemption rather than Regulation D, would such a safe harbor be used?

• Even if there was not extensive use of Regulation D for private offerings of structured finance products, is it necessary or appropriate for us to amend Rule 506 of Regulation D, as proposed, in order to forestall potential future problems in the private markets for structured finance products?

• Is our proposed amendment to Rule 144 appropriate?

• As proposed, the revisions to Rule 144A, Regulation D and Rule 144 require that the underlying transaction agreement include a provision that the issuer provide information to investors upon request. Should we revise the requirement to provide that the servicer, collateral administrator or some other party provides the information?

• The proposed revisions to Rule 144A, Regulation D, and Rule 144 also require that the issuer represent that prescribed information would be provided to investors. Is the proposal appropriate?

• Would the proposed rule revisions provide investors and market participants with sufficient transparency regarding private sales of structured finance products? Would additional or other requirements promote greater transparency? For example, should we make the safe harbors, such as Rule 144A, unavailable

for offerings of structured finance products? Would this result in structured finance products being offered and sold in registered transactions, or in private transactions without the benefit of the safe harbor? Would a new safe harbor for private ABS offerings designed to make information available to investors and the market (*e.g.,* a limited public offering exemption) be a more appropriate approach?

• The proposed amendments would have the effect of treating offers and sales in reliance on safe harbors substantially similar to public ones in terms of the relevant disclosure requirements. Is this appropriate? Why or why not? To what extent and in what way should our regulatory regime account for the nature of the investors (e.g., accredited investors and QIBs) who participate in private offerings? What would the impact be on the securitization market if offerings of ABS in reliance on the safe harbors were subject to the disclosure requirements that we propose?

• Should we address private resales of ABS outside of our safe harbors by interpreting the definition of "underwriter" for purposes of the statutory exemptions to include any sales of asset-backed securities where information that would be required in the registered context is not provided? Why or why not? Would doing so prevent issuers from engaging in transactions that are not subject to the proposed requirements by using a statutory exemption (and not the safe harbors) for the unregistered sale of asset-backed securities?

• To the extent we adopt the proposed changes to Rule 144A or Regulation D, we request comment on whether issuers of structured finance products would be more likely to sell such products outside the United States in reliance on the safe harbor provided by Regulation S [473] under the Securities Act. Should we adopt similar changes under Regulation S as we are proposing for Rule 144A and Regulation D to cover sales of structured finance products outside the United States? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A and Regulation D that we should take into account in considering adopting similar changes under Regulation S?

• In order to facilitate unsolicited ratings in unregistered transactions, should we require that the issuer also provide information to an NRSRO if the rating agency intends to rate the security?

• Are there other disclosure approaches that would better satisfy the objectives we have identified? For example, should we require more targeted disclosures in private placements? Should we give issuers or investors other options for addressing issues in the ABS private market? If so, how? Should all asset classes be treated the same?

C. Notice of Initial Placement of Securities Eligible for Sale Under Rule 144A and Revisions to Form D

In light of the role that privately-issued structured finance products play in our capital markets and concerns raised by the lack of transparency in the private market, we also believe it is important to implement rules that will provide information to us and to the markets at large about sales of structured finance products in the private markets. Consequently, we are proposing to require that a notice of an initial placement of structured finance products be filed with the Commission.

Form D [474] is the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.[475] While Form D is not a condition to the availability of the Regulation D exemption, Rule 507 [476] of Regulation D disqualifies an issuer from using a Regulation D exemption in the future if it has been enjoined by the court for violating the Regulation D provision that requires the filing of Form D. Form D serves an important data collection objective, among other things.[477] On February 27, 2008, we adopted changes to mandate the electronic filing of the form and to revise the form.[478] Currently, there is no such notice filing requirement for offerings made in reliance on Rule 144A.

We are proposing to require a notice of the offering to be filed with the Commission for the initial placement of structured finance products that are represented as eligible for resale under Rule 144A. The notice would include information regarding major participants in the securitization, the date of the offering and initial sale, the type of securities being offered, the basic structure of the securitization, the assets in the underlying pool, and the principal amount of the securities being offered. Like Form D, the notice would be required to be filed in XML tagged format.[479]

The notice would also provide that in submitting the notice, the issuer is undertaking to furnish the offering materials relating to the securities to the Commission upon written request. We also are proposing to add an amendment to Rule 30–1 of the Commission's Rules of General Organization to provide delegated authority to the Director of the Division of Corporation Finance to request information that the issuer would be required to undertake to provide to the Commission upon request. This proposed amendment to Rule 30–1 would also apply to the existing undertaking in Form D and provide the Director of the Division of Corporation Finance the authority to request information from issuers of structured finance products that file Form D.

This notice, which we are proposing to call Form 144A–SF,[480] would be signed by the issuer and filed with the Commission no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date would be the first business day following such period. This timeframe is based on the current timeframe for filing a Form D. Similar to Form D, the Form 144A–SF notice requirement is not proposed to be a condition of the availability of the Rule 144A safe harbor. However, in light of the importance of this information, we are proposing to provide that if an issuer has failed to file Form 144A–SF, then Rule 144A will not be available for subsequent resales of newly issued structured finance products of the issuer or affiliates of the issuer.

Also similar to Form D, hardship exemptions in Regulation S–T would be unavailable to Form 144A–SF.[481] We believe that issuers should have access to the Internet and be able to file this notice within 15 calendar days after the first sale of securities in the offering (i.e.

[473] 17 CFR 230.901 *et seq.*

[474] 17 CFR 239.500.

[475] *See* Rule 503 of Regulation D [17 CFR 230.503].

[476] 17 CFR 230.507.

[477] In *Electronic Filing and Revision of Form D,* Release No. 33–8891 (Feb. 6, 2008) [73 FR 10592], we noted that previous statements on Form D have suggested that, at the federal regulatory level, Form D filings serve both to collect data for use in the Commission's rulemaking efforts and for the enforcement of the federal securities laws, including enforcement of the exemptions in Regulation D. *See* Section I.A of Release No. 33–8891.

[478] *See id.*

[479] Similarly, filers submit Form D online through the Commission's EDGAR system, which stores the information in tagged format.

[480] *See* proposed 17 CFR 239.144A.

[481] We are proposing to amend Rules 201 and 202 of Regulation S–T to make the hardship exemptions unavailable to proposed Form 144A–SF.

the initial placement of securities), as proposed. We also believe hardship exemptions should not be available for Form 144A–SF because of the relative ease of filing, the limited value of paper filings and the utility of a uniform, comprehensive database.

We also are proposing to amend Form D to collect the same information that we are proposing to require to be provided in proposed Form 144A–SF. Further, we are proposing to add a checkbox to Form D that would indicate if the issuer is offering or selling structured finance products.[482]

Request for Comment

- Is our proposal to require a notice of the initial placement of structured finance products that may be resold in reliance on Rule 144A appropriate?
- Instead of, or in addition to, a notice, should we require that the offering circular be filed? If we require that the offering circular be filed, should the filing be with the Commission on a non-public basis? Should it be made available to the public? If so, when should it be made public (*e.g.,* immediately or after some period of time)? If it were made public, would there be any general solicitation concerns? If so, how should we address them?
- Should proposed Form 144A–SF be required to be filed, as proposed, in XML tagged format? Similar to Form D, should we provide a Web site page where issuers can submit directly to EDGAR the information required by Form 144A–SF, which would automatically tag the information that is delivered? Would issuers of structured finance products benefit from such a webpage?
- Are the items of information that are proposed to be required in proposed Form 144A–SF appropriate? Are there other items that are useful and should be required to be provided on proposed Form 144A–SF? Are there particular ways that these items should be required to be tagged?
- Should the Rule 144A safe harbor be conditioned on the filing of this notice, or is it better to require the notice separate from the conditions of the Rule 144A safe harbor, as proposed? Is our proposal relating to the consequences for failure to file the notice appropriate?
- Should we require the filing of proposed Form 144A–SF sooner than proposed (*e.g.,* three or four business days from the date of first sale) or should we provide issuers with more time for filing the notice (*e.g.,* 20 calendar days from the date of first sale)? Should we provide a hardship exemption for filing proposed Form 144A–SF, or is our proposal to make the hardship exemptions unavailable appropriate?
- Should we revise Form D, as proposed? Are the proposed revisions to Form D appropriate?
- Should we also adopt changes under Regulation S to require a notice of sales of ABS that are to be sold in reliance on that safe harbor, similar to the proposed requirement under Rule 144A? Are there any extra or special considerations relating to offshore sales of structured finance products that are different from considerations under Rule 144A that we should take into account in considering adopting a similar filing requirement under Regulation S?

VII. Codification of Staff Interpretations Relating to Securities Act Registration

We also are proposing to codify certain staff positions relating to the registration of asset-backed securities. These codifications should simplify our rules by making these positions more transparent and readily available to the public.

A. Fee Requirements for Collateral Certificates or Special Units of Beneficial Interest

In some ABS transactions backed by auto leases, the auto leases and car titles are originated in the name of a separate trust to avoid the administrative expenses of retitling the physical property underlying the leases.[483] The separate trust will issue to the issuing entity for the asset-backed security a collateral certificate, often called a "special unit of beneficial interest" (SUBI). The issuing entity will then issue the asset-backed securities backed by the SUBI certificate.

Rule 190 governs the registration requirements for underlying securities of an asset securitization. Rule 190(c) provides that if the asset pool for the asset-backed securities includes a pool asset representing an interest in or the right to the payments or cash flows of another asset pool, then that pool asset is not considered an "underlying security" that must be registered in accordance with the other provisions in Rule 190 if certain conditions are met. These conditions are:

- Both the issuing entity for the asset-backed securities and the entity issuing the pool asset were established under the direction of the same sponsor and depositor;
- The pool asset is created solely to satisfy legal requirements or otherwise facilitate the structuring of the asset-backed securities transaction;
- The pool asset is not part of a scheme to evade registration or the requirements of Rule 190; and
- The pool asset is held by the issuing entity and is a part of the asset pool for the asset-backed securities.[484]

In a publicly available telephone interpretation, the staff has advised that the offer and sale of the collateral certificate or SUBI involved in asset-backed transactions must also be registered (along with the securities themselves).[485] However, the staff has advised that, if the collateral certificate or SUBI meets the requirements of Rule 190(c) of the Securities Act, no additional registration fee for the offering of the collateral certificates or SUBIs should be required.[486] We are proposing to codify the staff's positions in this respect in Rule 190 and Rule 457 under the Securities Act,[487] which relates to the computation of Securities Act registration fees. Under the proposed amendment to Rule 190, notwithstanding other provisions, if the pool assets for the asset-backed securities are collateral certificates or SUBIs, those collateral certificates or SUBIs must be registered concurrently with the registration of the asset-backed securities.[488] Pursuant to the proposed revision to Rule 457, where the securities to be offered are collateral certificates or SUBIs underlying asset-backed securities which are being registered concurrently, no separate fee for the certificates or SUBIs will be payable.[489]

B. Incorporating by Reference Subsequently Filed Periodic Reports

Currently, the prospectus for an offering of securities registered on Form S–3 is required to incorporate by reference all subsequently filed periodic and other reports filed under Exchange

[482] In order to better organize the information in Form D in light of these changes, we also are proposing to re-order the items in Form D.

[483] *See also* discussion of these types of transactions in Section III.A.2.c of the 2004 ABS Adopting Release and John Arnholz and Edward E. Gainor, *Offerings of Asset-Backed Securities,* Aspen Publishers (2008 Supplement), at § 2.03[B].

[484] *See* 17 CFR 230.190(c). Rule 190(c) provides for the conditions in which an asset-backed issuer is not required to register a pool asset representing an interest in or the right to the payments or cash flows of another asset.

[485] *See* Interpretation 13.01 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules.

[486] *See id.*

[487] 17 CFR 230.457.

[488] *See* proposed revision to Rule 190(c).

[489] *See* proposed paragraph (s) to Rule 457.

Act Sections 13(a) and 15(d)[490] prior to the termination of the offering.[491] For corporate issuers, information regarding the issuer that is allowed to be omitted from the registration statement is made available through the Exchange Act reports.

With respect to asset-backed issuers, information filed with a current report on Form 8–K[492] prior to the termination of the offering would often be important to incorporate into the prospectus. For example, disclosure under Item 6.05 of Form 8–K may provide information regarding a change in the composition of the pool assets. However, the staff has previously noted that asset-backed issuers should not be required to incorporate information filed with their Form 10–D or Form 10–K[493] reports into the prospectus.[494]

We are proposing to codify in proposed Form SF–3 the staff's position regarding incorporation by reference of subsequently filed Exchange Act reports for offerings of asset-backed securities. Because, except for issuers that utilize master trust structures, the Form 10–D and Form 10–K that is filed prior to the termination of the offering is generally for a different ABS issuer than the ABS issuer that has filed the prospectus (even though the issuers are affiliated), Form 10–D and Form 10–K reports may not be relevant to asset-backed offering that is the subject of the prospectus. Thus, under the proposed codification, rather than state that all reports subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus, the registration statement may, alternatively, state that all current reports on Form 8–K filed by the registrant pursuant to 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.[495]

Request for Comment

- Should we codify the above staff positions?
- Should we make any changes to the staff positions? For example, should we require master trust issuers to state that all Exchange Act reports subsequently filed by the registrant shall be deemed to be incorporated by reference into the prospectus rather allow them to incorporate by reference only Form 8–K?
- Should we revise any of the positions we are proposing to be codified? Does the proposed language in any of the codifications modify, or create an ambiguity that we should revise?

VIII. Transition Period

We are considering the appropriate timing for implementation of the proposals, if adopted. Because sponsors of asset securitizations typically are large issuers,[496] we preliminarily believe that a tiered approach to implementation based on size of the sponsor would not be appropriate for asset-backed issuers. We believe that some of our proposed amendments, including asset-level and data tagging requirements, may initially impose significant burdens on sponsors and originators as they adjust to the new requirements. This could include changes to how information relating to the pool assets is collected and disseminated to various parties along the chain of securitization. While we believe that compliance dates should not extend past a year after adoption of the new rules, we request that commenters provide input about feasible dates for implementation of the proposed amendments. We currently anticipate that, if adopted, the new and amended rules, including the proposed asset-level information requirements and the changes with respect to privately-issued asset-backed securities, would apply to asset-backed securities that are issued after the implementation date of the new requirements.[497]

Request for Comment

- Should implementation of any proposals be phased-in? If so, explain why and provide a reasonable timeframe for a phase-in (e.g., six months, one or two years)?
- Should implementation be based on a tiered approach that relates to a characteristic other than the size of the sponsor? Is there any reason to structure implementation around asset class of the securities?

IX. General Request for Comments

We request comment on the specific issues we discuss in this release, and on any other approaches or issues that we should consider in connection with the proposed amendments. We seek comment from any interested persons, including investors, asset-backed issuers, sponsors, originators, servicers, trustees, disseminators of EDGAR data, industry analysts, EDGAR filing agents, and any other members of the public.

X. Paperwork Reduction Act

A. Background

Certain provisions of the proposed rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA).[498] The Commission is submitting these proposed amendments and proposed rules to the Office of Management and Budget (OMB) for review in accordance with the PRA.[499] An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid control number. The titles for the collections of information are:[500]

(1) "Form S–1" (OMB Control No. 3235–0065);

(2) "Form S–3" (OMB Control No. 3235–0073);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–D" (OMB Control No. 3235–0604);

(5) "Form 8–K" (OMB Control No. 3235–0288);

(6) "Regulation S–K" (OMB Control No. 3235–0071);

(7) "Regulation S–T" (OMB Control No. 3235–0424);

(8) "Form D" (OMB Control No. 3235–0076);

(9) "Form SF–1 (a proposed new collection of information);

(10) "Form SF–3 (a proposed new collection of information);

(11) "Asset Data File" (a proposed new collection of information);

(12) "Waterfall Computer Program" (a proposed new collection of information).

(13) "Form 144A–SF" (a proposed new collection of information); and

(14) "Privately-Issued Structured Finance Product Disclosure" (a

[490] 15 U.S.C. 78m and 15 U.S.C. 28o.

[491] *See* Item 12(b) of Form S–3.

[492] 17 CFR 249.308.

[493] 17 CFR 249.312 and 17 CFR 249.310.

[494] *See* Interpretation 15.02 of the Division's Manual of Publicly Available Interpretations on Regulation AB and Related Rules. The staff noted that the 2004 ABS Adopting Release noted that asset-backed issuers are required to incorporate by reference its Exchange Act reports only if the requirement is applicable. *See* chart in Section III.A.3.a of the Adopting Release.

[495] *See* proposed Item 11(b) of proposed Form SF–3.

[496] *See* Section XIV below.

[497] Thus, resecuritizations after the implementation date would be subject to the new requirements, regardless of whether issuance of underlying securities predates the implementation date.

[498] 44 U.S.C. 3501 *et seq.*

[499] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[500] The paperwork burden from Regulation S–K is imposed through the forms that are subject to the requirements in those regulations and is reflected in the analysis of those forms. To avoid a Paperwork Reduction Act inventory reflecting duplicative burdens and for administrative convenience, we assign a one-hour burden to Regulation S–K.

proposed new collection of information).

The regulations and forms listed in Nos. 1 through 8 were adopted under the Securities Act and the Exchange Act and set forth the disclosure requirements for registration statements and periodic and current reports filed with respect to asset-backed securities and other types of securities to inform investors. Regulation S–T specifies the requirements that govern the submission of electronic documents. Form D is filed by issuers as a notice of sales without registration under the Securities Act based on the claim of an exemption under Regulation D of the Securities Act.

The regulations and forms listed in Nos. 9 through 14 are newly proposed collections of information under the Securities Act and Exchange Act. Form SF–1 and Form SF–3, if adopted, would represent the new registration forms for offerings of asset-backed securities, as defined in Item 1101(c) of Regulation AB. Form SF–3 would represent the registration form for offerings that meet certain shelf eligibility conditions and can be offered on a delayed basis under Rule 415. Form SF–1 would represent the registration forms for other asset-backed offerings. Asset Data File and Waterfall Computer Program are proposed new collections of information that would relate to the regulations and proposed new forms for asset-backed issuers under the Securities Act and Exchange Act that set forth certain disclosure requirements for registration statements and periodic and current reports for asset-backed issuers. Under the requirements, an asset-backed issuer would be required to submit to the Commission specified, tagged information on assets in the pool underlying the securities and a computer program that gives effect to the flow of funds or "waterfall" provisions of the transaction agreements. Form 144A–SF would represent a new notice requirement for certain offerings made in connection with the safe harbor provided in Rule 144A. Finally, Privately-Issued Structured Finance Product Disclosure is the disclosure that issuers would be required to agree to provide to investors when an ABS issuer sells securities that are eligible for resale under the Rule 144A safe harbor or when an ABS issuer sells securities in reliance on the Regulation D safe harbor.

Compliance with the proposed amendments would be mandatory except that the amendments that would impose collection of information requirements on privately-issued structured finance products would only be required if the issuer is relying on the safe harbors to which those collection of information requirements relate. Responses to the information collections would not be kept confidential and there would be no mandatory retention period for proposed collections of information.

B. Revisions to PRA Reporting and Cost Burden Estimates

Our PRA burden estimates for each of the existing collections of information, except for Form 10–D, are based on an average of the time and cost incurred by all types of public companies, not just ABS issuers, to prepare a particular collection of information. Form 10–D is a form that is only prepared and filed by ABS issuers. In 2004, we codified requirements for ABS issuers in these regulations and forms, recognizing that the information relevant to asset-backed securities differs substantially from that relevant to other securities.

Our PRA burden estimates for the proposed amendments are based on information that we receive on entities assigned to Standard Industrial Classification Code 6189, the code used with respect to asset-backed securities, as well as information from outside data sources.[501] When possible, we base our estimates on an average of the data that we have available for years 2004, 2005, 2006, 2007, 2008, and 2009. In some cases, our estimates for the number of asset-backed issuers that file Form 10–D with the Commission are based on an average of the number of ABS offerings in 2006, 2007, 2008, and 2009.[502]

1. Form S–3 and Form SF–3

Our current PRA burden estimate for Form S–3 is 236,959 annual burden hours. This estimate is based on the assumption that most disclosures required of the issuer are incorporated by reference from separately filed Exchange Act reports. However, because an Exchange Act reporting history is not a condition for Form S–3 eligibility for ABS, ABS issuers using Form S–3 often must present all of the relevant disclosure in the registration statement rather than incorporate relevant disclosure by reference. Thus, our current burden estimate for ABS issuers using Form S–3 under existing requirements is similar to our current burden estimate for ABS issuers using Form S–1. During 2004 through 2009, we received an average of 99 Form S–3 filings annually related to asset-backed securities.

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration by offerings of asset-backed securities. Under our proposal, proposed Form SF–3 would be the ABS shelf equivalent form of existing Form S–3. For purposes of our calculations, we estimate that the proposals relating to shelf eligibility and new shelf procedures would cause a 10% movement in the number of filers (i.e., a decrease of ten registration statements) out of the shelf system due to the new requirements of risk retention and ongoing reporting for shelf registration eligibility.[503] On the other hand, we estimate the number of shelf registration statements for ABS issuers would increase by five as a result of the proposed elimination of base and supplement prospectuses for these issuers.[504] Thus, we estimate that the number of shelf registration statements will decrease by five altogether. Accordingly, we estimate that the proposals would cause a decrease of 99 ABS filings on Form S–3 and a corresponding number of 94 Form SF–3s filed annually.[505]

In 2004, we estimated that an ABS issuer, under the 2004 amendments, would take an average of 1,250 hours to prepare a Form S–3 to register ABS.[506] For registration statements, we estimate that 25% of the burden of preparation is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the registrant at an average cost of $400 per hour.[507] In this release, we are proposing new and revised disclosure requirements for ABS issuers that if adopted, would be a cost to filing on Form SF–3.

We are proposing a significant new disclosure requirement that the issuer provide asset-level information for each of the assets in the underlying pool.

[501] We rely on two outside sources of ABS issuance data. We use the ABS issuance data from Asset-Backed Alert on the initial terms of offerings, and we supplement that data with information from Securities Data Corporation (SDC).

[502] Form 10–D was not implemented until 2006. Before implementation of Form 10–D, asset-backed issuers often filed their distribution reports under cover of Form 8–K.

[503] We calculated the decrease of ten Form SF–3s by multiplying the average number of Form S–3s filed (99) by 10 percent.

[504] Based on staff reviews, we believe it is very unusual to see ABS registration statements with multiple unrelated collateral types such as auto loans and student loans. There are occasionally multiple related collateral types such as HELOCs, subprime mortgages and Alt A mortgages in ABS registration statements.

[505] This is based on the number of registration statements for ABS issuers filed on Form S–3 and the two changes due to our rule proposal.

[506] *See* 2004 ABS Adopting Release and 2004 ABS Proposing Release.

[507] *See, e.g., Credit Ratings Disclosure,* Release No. 33–9070 (Oct. 7, 2009) [74 FR 53086].

Credit card ABS issuers would be required to provide grouped asset data. Another new disclosure requirement would be the filing of a waterfall computer program that gives effect to the waterfall provisions of the transaction. For purposes of the PRA, we are including the costs relating to providing this disclosure on the assets in the estimate for our newly proposed collection of information entitled "Asset Data File." We are also including the costs related to the filing of the waterfall computer program as a separate collection of information, as discussed in the section below entitled "Waterfall Computer Program." We are also proposing some additional disclosure requirements that may impose some additional costs to ABS issuers with respect to registration statements.

If the proposals are adopted, we estimate that the incremental burden for ABS issuers to complete the disclosure requirements in Form SF–3, prepare the information, and file it with the Commission would be 100 burden hours per response on Form SF–3. As a result, we estimate that each Form SF–3 would take approximately 1,350 hours to complete and file.[508] We estimate the total internal burden for Form SF–3 to be 31,725 hours and the total related professional costs to be $38,070,000.[509] This would result in a corresponding decrease in Form S–3 burden hours of 30,937.5 and $37,125,000 in professional costs.[510]

2. Form S–1 and Form SF–1

We are proposing to move the requirements for asset-backed issuers into new forms that would be solely for the registration of asset-backed issuers. Proposed Form SF–1 would be the non-shelf equivalent form of existing Form S–1 under our proposal. As noted above, for purposes of our calculation, we estimate that the new proposals for shelf eligibility and new shelf procedures would cause small movement in the number of filers from the shelf system to the non-shelf system. For purposes of the PRA, we estimate three ABS issuers will move from the shelf system to the non-shelf system of proposed Form SF–1.[511] From 2004 through 2009, an average of four Form S–1s were filed annually by ABS issuers. Correspondingly, we estimate that the number of filings on Form SF–1 will be seven, which is the sum of the four average filings per year and the estimated incremental three filings from shelf to Form SF–1.

For ABS filings on Form S–1, we have used the same estimate of burden per response that we used for Form S–3, because the disclosures in both filings are similar.[512] Even under the proposals, the disclosures would continue to be similar for shelf registration statements and non-shelf registration statements. The burden for the proposed requirements for the asset data file and the waterfall computer program to be filed as exhibits to Form SF–1 are included in the newly proposed collections of information discussed below rather than in this section for Form SF–1. Thus, we estimate that an ABS Form SF–1 filing will impose an incremental burden of 100 hours per response, which is equal to the incremental burden to file Form SF–3. We estimate the total number of hours to prepare and file each Form SF–1 at 1,350, the total annual burden for the issuer at 2,362.5 hours and added costs for professional expenses at $2,835,000.[513] This would result in a corresponding decrease in Form S–1 burden hours of 1,250 and $1,500,000 in professional costs.[514]

3. Form 10–K

The ongoing periodic and current reporting requirements applicable to operating companies differ substantially from the reporting that is most relevant to investors in asset-backed securities. For asset-backed issuers, in addition to a limited menu of Form 10–K disclosure items, the issuer must file a servicer compliance statement, a servicer's assessment of compliance with servicing criteria, and an attestation of an independent public accountant as exhibits to the Form 10–K.

One of our proposed ABS shelf eligibility conditions (*i.e.,* criteria that must be met in order to be eligible to register ABS on Form SF–3) would require the issuer to undertake to file Exchange Act reports as long as non-affiliates hold any of its securities that were sold in registered transactions. Except for master trust issuers, the requirement to file Form 10–K for ABS issuers is typically suspended after the year of initial issuance because the issuer has fewer than 300 security holders of record.[515] Therefore, the incremental impact to the number of Forms 10–K filed by ABS issuers would increase each year after the proposal is adopted by the number of ABS shelf offerings. The yearly average of ABS registered shelf offerings with the Commission over the period from 2004 to 2009 was 929.[516] In the first year after implementation, we use 958, which is the average number of all offerings over 2004–2009, as an estimate for the number of Forms 10–K we expect to receive. In the second year after implementation, we increase our estimate of the number of Forms 10–K expected by 929 to a total of 1,887. In the third year after implementation, the addition of another 929 brings the total to 2,817. The average number of Forms 10–K over three years would, therefore, be 1,887. As a result, for PRA purposes, we estimate an increase in Form 10–K filings of 929 filings.

We estimate that, for Exchange Act reports, 75% of the burden of preparation is carried by the company internally and that 25% of the burden is carried by outside professionals retained by the registrant at an average

[508] The total burden hours to file Form SF–3 are calculated by adding the existing burden hours of 1,250 that we estimate for Form S–3 and the incremental burden of 100 hours imposed by our proposals for a total of 1,350 total burden hours.

[509] To calculate these values, we first multiply the total burden hours per Form SF–3 (1,350) by the number of Form SF–3s expected under the proposal (94), resulting in 126,900 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 31,725 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $38,070,000.

[510] To calculate these values, we first multiply the total burden hours per Form S–3 (1,250) by the average number of Form S–3s over the period 2004–2009 (99), resulting in 123,750 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 30,937.5 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $37,125,000.

[511] We estimate in the section above that the proposals relating to shelf eligibility and new shelf procedures would cause a ten percent movement in the number of filers out of the shelf system. We assume, for the purposes of our PRA estimates, that the other filers that do not move to Form SF–1 would utilize the private markets or offshore offerings for offerings of ABS.

[512] *See* Section IV.B.2 of the 2004 ABS Proposing Release.

[513] The total burden hours to file Form SF–1 are calculated by adding the existing burden hours of 1,250 and the incremental burden of 100 hours imposed by our proposals for a total of 1,350 hours. To calculate the annual internal and external costs, we first multiply the total burden hours per Form SF–1 (1,350) by the number of Form SF–1s expected under the proposal (7), resulting in 9,450 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 2,363.5 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $2,835,000.

[514] To calculate these values, we first multiply the total burden hours per Form S–1 (1,250) by the average number of Form S–1s filed during 2004–2009 (4), resulting in 5,000 total burden hours. Then, we allocate 25 percent of these hours to internal burden, resulting in 1,250 hours. We allocate the remaining 75 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $1,500,000.

[515] *See* Exchange Act Section 15(d).

[516] The 929 ABS registered shelf offerings is 97 percent of the average yearly number of ABS offerings from 2004 through 2009.

cost of $400 per hour. In 2004, we estimated that 120 hours would be needed to complete and file a Form 10–K for an ABS issuer. We estimate that our proposals relating to Form 10–K would not increase the estimate for the time needed to complete and file Form 10–K for an ABS issuer.

However, our proposed amendments may have a limited impact on the preparation of Form 10–K for the sponsor of the ABS issuer, if the sponsor is a company that is required to report under the Exchange Act. Though we are not proposing changes to Form 10–K disclosure requirements for sponsors, our proposals may impact the work that sponsors would have to do to disclose in their Form 10–K the securities they are required to hold as a result of the proposals and the investments they make to manage risks associated with the new requirements. We estimate that our proposals will cause an increase in the number of hours the sponsor will incur to prepare, review and file Form 10–K by 10 hours. From 2004 to 2009, the number of unique ABS sponsors was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that, for PRA purposes, the total annual increase in the number of hours to prepare, review, and file Form 10–K would be 112,050.[517] We allocate 75% of those hours (84,038 hours) to internal burden and the remaining 25% to external costs totaling $11,205,000 using a rate of $400 per hour.

4. Form 10–D

In 2004, we adopted Form 10–D as a new form for only asset-backed issuers. This form is filed within 15 days of each required distribution date on the asset-backed securities, as specified in the governing documents for such securities. The form contains periodic distribution and pool performance information. We have derived an estimate of the number of Form 10–Ds filed by registered ABS issuers using the average annual number of ABS registered offerings completed over the period 2004–2009.[518] The average over those years was 958 offerings annually.

As discussed above, we are proposing to require, as a condition to shelf eligibility, an undertaking from the issuer that it will continue to file Exchange Act reports as long as non-affiliates hold any of its securities that were sold in registered transactions. As with the Form 10–K, we believe that our proposals would result in an increase in the number of Form 10–Ds filed. Except for master trust issuers, the requirement to file Form 10–D for ABS issuers is typically suspended after the year of initial issuance because the issuer has fewer than 300 security holders of record.[519] Therefore, the incremental impact to the number of Forms 10–D filed by ABS issuers would increase each year after the proposal is adopted by the number of ABS shelf offerings older than one year where any of its securities are held by non-affiliates. From 2004 to 2009, the yearly average of ABS registered shelf offerings filed with the Commission was 929.[520] Since Form 10–D is required on a periodic basis based on the distribution schedule of the security, we estimate the total number of Form 10–Ds filed in the first year after implementation to be 5,748.[521] In the second year after implementation, we increase our estimate of the number of Forms 10–D expected by 5,576 for a total of 11,324.[522] In the third year after implementation, the addition of another 5,576 brings the total to 16,899. The average number of Forms 10–D over three years would, therefore, be 11,324. Therefore, for PRA purposes, we estimate an increase in Form 10–D filings of 5,576 filings.

In 2004, we estimated that it would take 30 hours to complete and file Form 10–D.[523] As discussed below, we are proposing to add asset-level disclosure requirements that relate to ongoing performance of the assets to the requirements of Form 10–D. For credit card ABS issuers, we are proposing to add to Form 10–D a requirement that such issuers provide grouped asset data. Those proposed requirements are included in our estimate of the asset-level disclosure collection of information requirements, as discussed below in the section entitled "Asset Data File." We believe that our other proposed revisions to Form 10–D would not increase the burden hours for the form. Therefore, we estimate that the total annual increase in the number of hours to prepare, review, and file Form 10–D would be 167,280.[524] We allocate 75% of those hours (125,460 hours) to internal burden and the remaining 25% to external costs totaling $16,728,000 using a rate of $400 per hour.

5. Form 8–K

Our current PRA estimate for Form 8–K is based on the use of the report to disclose the occurrence of certain defined reportable events, some of which are applicable to asset-backed securities.

The number of ABS issuers filing Form 8–Ks on an annual basis may be affected by our proposal to require an ABS issuer that wishes to be shelf-eligible to undertake to file Exchange Act reports on an ongoing basis. In addition, our proposal to revise existing Item 6.05 of Form 8–K, which currently requires disclosure for any change in the actual asset pool over five percent from the description in the prospectus, by instead requiring an ABS issuer to instead provide information for any change equal to or greater than one percent in the asset pool from the prospectus description, may lead to an increase of Form 8–K filings.[525] We are also proposing to add a requirement that the sponsor provide disclosure on Form 8–K for a material change in its interest in the transaction.[526]

In 2004, we estimated that the new items added to Form 8–K to address ABS disclosure would cause an increase of two reports on Form 8–K per ABS issuer per year.[527] We estimate that our proposals would cause an increase of 1.5 reports on Form 8–K per ABS issuer per year, or a total of approximately 1,437 additional reports per year.[528]

In 2004, we estimated that an average ABS issuer would spend about five

[517] The 112,050 total burden hours are calculated by adding the impact on ABS issuers, which equals 929 incremental Forms 10–K times 120 burden hours per filing, and the impact on sponsors of ABS issuers, which equals 57 sponsors times 10 incremental burden hours.

[518] Even though we adopted Form 10–D in 2004 and its implementation was not effective until 2006, we use the longer time period of 2004–2009 to match the years used for our estimate of the expected Form 10–Ks to be filed.

[519] *See* Exchange Act Section 15(d).

[520] The 929 ABS registered shelf offerings is 97 percent of the average yearly number of ABS offerings from 2004 through 2009.

[521] We are estimating that the number of Forms 10–D per year would be a multiple of six times the number of offerings per year (958) for a total of 5,748 Form 10–D filings per year. Different types of asset-backed securities have different distribution periods, and the Form 10–D is filed each distribution period. We derived the multiplier of six by comparing the number of Forms 10–D that have been filed since 2006 with the number of Forms 10–K (which are only required to be filed once a year) that have been filed.

[522] We calculate the incremental number of Forms 10–D by multiplying our previous estimate of 929 shelf offerings per year by our estimate of six Forms 10–D filed per offering for a total of 5,576 filings per year.

[523] *See* the 2004 ABS Adopting Release.

[524] The burden hours are calculated by multiplying 5,576 incremental Forms 10–D by the 30 burden hours required to complete the form for a total of 167,280 hours.

[525] Our estimate here does not include an increase that would result in filing Item 6.06 or Item 6.07 Forms 8–K which are instead included in our burden estimate for the newly proposed collection of information requirements for asset-level data and the waterfall computer program.

[526] *See* existing Item 6.03 of Form 8–K.

[527] *See* 2004 ABS Adopting Release.

[528] The number of ABS offerings is based on the average number of ABS deals issued annually over 2004 through 2009.

hours completing the form.[529] We estimate that the average burden for the disclosure per Form 8–K would remain relatively the same. Accordingly, we estimate the total annual increase in the number of hours to prepare, review, and file Form 8–K would be 7,185, with 75% of those hours (5,389) allocated to internal burden and the remaining 25% allocated to external costs of $718,500 using a rate of $400 per hour.[530]

6. Regulation S–K and Regulation S–T

Regulation S–K, which includes the item requirements in Regulation AB, contains the requirements for disclosure that an issuer must provide in filings under both the Securities Act and the Exchange Act. As noted above, Regulation S–T contains the requirements that govern the electronic submission of documents. In 2004, we noted that the collection of information requirements associated with Regulation S–K as it applies to ABS issuers are included in Form S–1, Form S–3, Form 10–K and Form 8–K. We assign one burden hour to Regulation S–K for administrative convenience to reflect that the changes to the regulation did not impose a direct burden on companies.[531]

The proposed changes would make revisions to Regulation S–K and Regulation S–T. The collection of information requirements, however, are reflected in the burden hours estimated for the various Securities Act and Exchange Act forms related to ABS issuers. The rules in Regulation S–K and Regulation S–T do not impose any separate burden. Consistent with historical practice, we have retained an estimate of one burden hour each to Regulation S–T and Regulation S–K for administrative convenience.

7. Asset Data File

This new collection of information corresponds to asset data file information requirements that we are proposing to add to proposed Form SF–1, proposed Form SF–3, Form 10–D, and Form 8–K. They would be required to appear in exhibits to these forms. Our proposed standard definitions for asset-level information are similar to, and in part based on, other standards that have been developed by the industry, such as those developed under ASF's Project RESTART and those developed by the CRE Finance Council (formerly CMSA). These proposed standard definitions employ widely used metrics relating to asset-level information and, based on discussions with the industry, we believe that much of asset-level information may already be available for collection, although the format of such information may not be the one that we propose to require. We also believe that first year implementation costs may be much more significant than ongoing implementation costs.

An ABS issuer filing on proposed Form SF–1 or proposed Form SF–3 would be required to provide this new information. For the most part, this new information would be provided at the time that the newly proposed Rule 424(h) filing is required to be filed, at the time the final prospectus is required to be filed, and after there are certain changes to the pool, such as the substitution or addition of assets. Certain information would be required to be filed on an ongoing basis. We believe the information is currently available to the ABS issuer but additional time and expense will be involved in including the information in registration statements in the format that we are proposing.

The requirements are tailored by asset class. All asset classes except credit card receivables and stranded costs are required to provide asset-level information on each asset in the pool. Information relating to the performance of the assets would be required to be filed on an ongoing basis. Credit card ABS issuers would be required to provide grouped asset data, both at the time of securitization and on an ongoing basis. The grouped asset data could be incorporated by reference (from a previously filed Form 10–D).

We believe that the costs of implementation would include software costs, costs to tag the required data, costs of maintaining the required information, and costs of filing. The number of unique ABS sponsors over 2004–2009 was 343, for an average of 57 unique sponsors per year. We estimate that there are 10 unique sponsors of credit card securitizations over a three-year period (or three unique sponsors per year). We base our burden estimates for this collection of information on the assumption that most of the costs of implementation of the proposed asset-level data filing requirements would be incurred before the sponsor files its first asset-level data filing in compliance with the proposed rules. Because asset-backed issuers are currently required by Regulation AB to file pool-level information on the assets in the underlying pool,[532] we assume, for purposes of our PRA estimates, that much of the information that is required to be provided by the new disclosure requirements should be accessible from existing sponsor data systems.

Because of the number of fields involved, our estimates for the proposed asset-level requirements are based on EDGAR data on RMBS and CMBS issuers. We estimate that, for purposes of the PRA burden estimate for the asset-level disclosure requirements, approximately two percent of the proposed asset-level data fields that are required at the time of securitization and approximately two percent of the asset-level data fields that are required on an ongoing basis would require the sponsor to adjust its systems and procedures for collecting information on each asset. We estimate that, for purposes of an initial filing of asset-level information at the time of securitization, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for each asset in a pool. We estimate that an RMBS sponsor would incur a one-time setup cost for the initial filing of 3,194 hours to adjust its existing systems to provide the required information at the time of securitization for each asset in the initial filing, 86 hours for a CMBS sponsor, and 2,010 hours for a credit card receivables sponsor.[533] After a sponsor has made the necessary adjustments to its systems and after an initial filing of asset-level data has been made, we estimate that subsequent filings for asset-level data will take approximately ten hours to prepare, review, and file. For credit card ABS sponsors, grouped asset data may be incorporated by reference, as proposed, and therefore, we are not including additional costs for

[529] *See* 2004 ABS Adopting Release.

[530] The total burden hours are calculated by multiplying the expected number of Form 8–K reports per year (1,437) times the estimated hours per filing (5) for a total of 7,185. Then, we allocate 75 percent of these hours to internal burden, resulting in 5,389 hours. We allocate the remaining 25 percent of the total burden hours to related professional costs and use a rate of $400 per hour to calculate the external professional costs of $718,500.

[531] *See* 2004 ABS Adopting Release.

[532] Also, some registered issuers may be providing asset-level information to investors, although such information is not standardized.

[533] For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. Because we believe that the information that is required by the proposed grouped asset data requirement would be information that a credit card ABS sponsor already collects in its existing systems, we believe the initial set-up costs for a sponsor would not include expenses necessary to adjust systems to collect new information. However, a sponsor may expend some additional effort for other adjustments due to the requirement and therefore, we estimate that the initial filing of grouped asset data would require 2000 hours for a credit card ABS sponsor, plus an added ten hours for tagging and filing the information.

subsequent filings by a credit card master trust.

Similarly, we estimate that for purposes of an initial filing of asset-level ongoing information, a sponsor would be required to expend at least 18 minutes for each item where adjustments must be made for each asset in a pool. We estimate that an RMBS sponsor would incur a one-time set-up cost of 3,811 hours to adjust its existing systems to provide the required ongoing information for each asset in the initial filing, 92 hours for a CMBS sponsor, while a credit card receivables sponsor would not incur additional setup costs for ongoing information.[534] After a sponsor has made the necessary adjustments to its systems in connection with the proposed rule and, after an initial filing of asset-level ongoing information has been made, we estimate that subsequent filings for asset-level ongoing information by a sponsor will take approximately ten hours to prepare, review, and file. We estimate that filings of grouped asset data for credit card ABS issuers would take approximately ten hours to prepare, review and file.

Based on the number of loans that may be securitized in a particular offering and the asset-level requirements for each of the asset classes, and the number of offerings for each of the asset classes, we estimate that the total annual burden hours for preparing, tagging and filing asset-level disclosure or grouped asset data at the time of securitization will be 151,368.[535] We allocate 25% of those hours (37,842.04) to internal burden hours for all ABS issuers and 75% of the hours to out-of pocket expenses for software consulting and filing agent costs at a rate of $250 per hour totaling $28,381,527.95. We estimate that the average annual hours for preparing, tagging and filing asset-level disclosure or grouped asset data on an ongoing basis with the Form 10–D will be 207,009 hours for all ABS issuers.[536] We allocated 75% of those hours (155,256.5 hours) to internal burden hours and 25% of those hours for out-of-pocket expenses for software consulting and filing agent costs at a rate of $250 per hour totaling $12,938,042.83. Thus, we estimate the total annual incremental burden for the asset-level disclosure requirements or grouped asset data at 193,098.6 hours[537] and the added total amount of out-pocket expenses for software and filing agent costs at $41,319,570.78.[538]

8. Waterfall Computer Program

While the proposed requirement that ABS issuers file machine-readable computer code detailing the waterfall of the ABS securities issued would be a new collection of information, we believe issuers already produce such a code to structure the ABS deal. However, issuers would bear the costs of converting the code that they typically create into code that meets our proposed requirements. We believe that a substantial portion of those costs will be incurred for each sponsor at the time of implementation of the rule to set up mechanisms to convert the typical program used for waterfall purposes.

Some examples of the need for such mechanisms are: (i) Waterfall programs written in languages not directly portable to Python that will have to be adapted to the Python language, (ii) code within the waterfall program that is not required by the rule or necessary for investors to use and understand the waterfall may need to be removed or adapted for the program to run as required by the rule, (iii) and additional functionality of the program, such as a user interface to input assumptions or to input the asset data file, not currently used by sponsors will have to be incorporated. We estimate that issuers will incur a one-time setup cost of 672 hours to create such mechanisms to meet this filing requirement.[539] Additionally, we estimate a two-hour burden at the time of filing for each ABS deal for which a waterfall program is required to be filed to verify that the mechanisms worked properly and that the program meets the requirements of the rule.

As noted above, the number of unique ABS sponsors over 2004–2009 was 343, for an average of 57 unique sponsors per year. Therefore, we estimate that it would take a total of 38,304 hours for ABS issuers to set up the mechanisms to file the waterfall computer program.[540] We allocate 25 percent of these hours (9,576 hours) to internal burden for all sponsors. For the remaining 75 percent of these hours (28,728 hours), we use an estimate of $250 per hour for the costs of computer programmers to derive an external cost of $7,182,000.[541]

The yearly burden at the time of filing for each deal is estimated to be 1,916 hours.[542] For PRA purposes we allocate 25% of these hours (479 hours) to internal burden hours and 75% for out-of-pocket expenses for professional costs totaling $574,800 using a rate of $400 per hour. Therefore, the total internal burden hours are 10,055 and the total external costs are $7,756,800.[543]

9. Form 144A–SF and Form D

Form 144A–SF is a new collection of information that would cover the notice of sales of asset-backed securities that would be required under the proposed revisions to Rule 144A. This notice would contain information related to major participants in the securitization, the date of the offering, the type of securities offered, the basic structure of the securitization and the principal amount of the securities offered. Over the period 2004–2009, the annual

[534] For RMBS and CMBS issuers, this is based on an average pool size for RMBS of 3,317 assets and an average pool size for CMBS of 165 assets and also includes ten hours for tagging and filing the required asset-level disclosure. We do not believe that sponsors credit card receivables would incur additional setup costs for filing grouped asset data information on an ongoing basis since the information that is filed on an ongoing basis is the same information that is required at the time of securitization.

[535] We apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

[536] Again, we apportion the burden according to the proportion of offerings in each asset class using the following asset classes: (1) CMBS, (2) Credit Cards, (3) RMBS and other. We believe that using the RMBS estimates to represent the burden for other asset classes offers a conservative burden estimate because of the number of data items necessary for RMBS. To calculate the proportions, we divide the average number of offerings per year for each asset class (79 for credit cards, 43 for CMBS, and 836 for RMBS or other asset classes) by the average number of offerings for all asset classes (958).

[537] 193,098.6 = 37,842.04 + 155,256.5.

[538] $41,319,570.78 = $28,381,527.95 + $12,938,042.83.

[539] The value of 672 hours for setup costs is based on staff experience and is calculated using an estimate of two computer programmers for two months, which equals 21 days per month times two employees times two months times eight hours per day.

[540] The burden of 38,304 hours to set up mechanisms to file the waterfall program is calculated by multiplying the average number of unique sponsors (57) by the estimated set up hours per sponsor (672).

[541] Multiplying the 28,728 external cost hours by the $250 per hour estimate results in the external cost of $7,182,000.

[542] Multiplying the average number of ABS issues per year (958) by the burden hours at the time of filing each deal (2.0) results in 1,916 hours.

[543] We sum the internal burden hours from setup of the waterfall code mechanisms (9,576) and the per-offering internal filing burden hours (479) to get the total internal burden of 10,055. The total external cost of $7,756,800 is calculated by adding the cost from setup ($7,182,000) and the cost from filing each waterfall at the time of offering ($574,800).

average number of Rule 144A ABS offerings was 716.[544]

We believe that the burden assigned to Form 144A–SF should reflect the cost of preparing the notice and the cost of filing the notice. We estimate that preparing, tagging, and filing the Form 144A–SF will require approximately 2.0 hours per response. Using the annual average of 716 Rule 144A offerings, the total burden hours equals 1,432. We allocate 25% as a burden to the seller and 75% as costs of counsel utilized for the preparation and filing of the form. Therefore, the incremental annual impact of Form 144A–SF will be 358 hours and $429,600 in professional costs using an hourly rate of $400.

Form D is an existing collection of information under the PRA. Form D is a notice of sales for offerings made under Regulation D. Currently, we estimate that the burden hours of Form D to be approximately 4.0 hours per response, of which one hour is borne internally and three hours are borne externally. Under the proposal, Form D would be revised to collect, in addition to the information that the form currently collects, the same information as proposed Form 144A–SF when filed in connection with an ABS offering. We are aware of only one Form D filed for an ABS offering in 2009.[545] Thus, we believe that the change to this collection of information should be very small. For PRA purposes, we estimate that the Form D filing burden would not increase. Therefore, we continue to estimate that the burden hours for Form D will be 4.0 hours.

10. Privately-Issued Structured Finance Product Disclosure

This new collection of information relates to proposed disclosure requirements for structured finance product issuers that wish to take advantage of the safe harbors provided by Rule 144A, Regulation D and Rule 144. Under the proposed amendments, such issuers would be required to provide the purchaser or prospective purchaser with the same information that would be required if the offering were registered with the Commission. Some of the information that is required for registered offerings, we believe, is being provided to investors who purchase structured finance products in the private markets.[546] For purposes of the PRA, we are assuming that the hours that private structured finance product issuers expend to provide information to investors are approximately the same hours that would be required to prepare information in the registered context. Therefore, our estimate for this new collection of information will be based on the incremental costs that the proposed amendments in this release would include. Although information for a private ABS issuer is not required to be filed with the Commission, the cost of preparing such information should be relatively the same as the estimated burdens for preparing and filing information required in the registered context. We estimate that it will take approximately 300 hours per offering to prepare additional offering information that would be required under the proposed amendments. This is based on the incremental cost of the proposed amendments to ABS issuers that register their offerings with the Commission, along with the cost estimates for the asset data file that would be filed at the time of securitization and the waterfall computer program that we are proposing to require be filed for each ABS offering. Under our proposal, ABS issuers that relied on the safe harbors would be required to provide the same ongoing information that would be required in registered offerings. We estimate that it will take an issuer approximately 18 hours to complete a distribution report accompanied by asset-level and grouped asset data ongoing information for the distribution period. This is based on the incremental costs of providing Form 10–K, Form 10–D, and Form 8–K reports, which would comprise of the cost estimates for the asset data file that is required to be filed on an ongoing basis, as proposed.

As noted above, the average number of private offerings of ABS per year pursuant to Rule 144A over the period 2004–2009 was 716. Based on that number, we estimate an average number of 8,592 ongoing reports containing distribution information and ongoing asset data file information would be provided to investors each year,[547] and a total of 716 annual reports that would be provided to investors each year. Therefore, at the time of securitization, we estimate that the proposed collection of information will impose a total annual burden of 214,791 hours,[548] with 25% of the cost borne internally (53,698 hours) and the remainder of hours paid to outside professionals or software consulting and programming costs ($48,328,318).[549] For information that is provided on an ongoing basis, we estimate that the proposed collection of information will impose a total annual burden of 157,067 hours,[550] with 75% of the cost borne internally (117,800 hours) and the remainder paid to outside professionals or software consulting costs ($9,816,658).[551] Thus, the total estimate for internal burden hours is 171,498,[552] and the total estimate for outside costs is $58,144,976.[553]

11. Summary of Proposed Changes to Annual Burden Compliance in Collection of Information

Table 1 illustrates the changes in annual compliance burden in the collection of information in hours and costs for existing reports and registration statements and for the proposed new registration statements for asset-backed issuers. Below, the asset data file is annotated as "Asset Data," the waterfall computer formula is annotated as "WCP", and privately-issued structured-finance disclosure is annotated as "P–SF." Bracketed numbers indicate a decrease in the estimate.

[544] This is based on ABS issuance data from Asset-Backed Alert and information from Securities Data Corporation (SDC).

[545] We believe typically private offerings of ABS are conducted pursuant to Section 4(2) of the Securities Act without reliance on the safe harbor of Regulation D and are followed by resale(s) of the securities in reliance on Rule 144A.

[546] Because of the lack of transparency in the private structured finance product market, we do not have estimates regarding the amount of information and completion time that a typical private structured finance product issuer will need in order to provide investors offering and ongoing information nor estimates of the cost of such information. As discussed below, we are requesting comment on this information.

[547] This is based on an average number of such ongoing reports that we estimate private structured finance product issuers would provide to investors over the three years after implementation. Consistent with our estimates in the registered context, we estimate that issuers would provide such ongoing reports at a multiple of six times the number of offerings per year.

[548] We calculate the total annual burden of 214,791 hours by multiplying the expected number of filings per year (716) times the burden hours per securitization filing (300).

[549] We estimate that hours related to providing asset-level information and the waterfall computer program is allocated to software consulting or other labor costs ($22,621,125) at a cost of $250 per hour and hours related to providing other types of information is allocated to costs of outside professionals ($21,480,000) at a cost of $400 per hour.

[550] We calculate the total annual burden of 157,067 hours by adding the total number of hours we believe it would take to provide ongoing asset-level information (18 hours*8,592 reports).

[551] We estimate that hours relating to asset-level information paid to software consultants or other labor costs would be paid at cost of $250 per hour.

[552] 171,498 = 53,698 + 117,800.

[553] $58,144,976 = $9,816,658 + $48,328,318.

Form	Current annual responses	Proposed annual responses	Current burden hours	Decrease or increase in burden hours	Proposed burden hours	Current professional costs	Decrease or increase in professional costs	Proposed professional costs
S–3	2,065	1,966	236,959	[30,937.5]	206,021.5	284,350,500	[37,125,000]	247,225,500
S–1	1,168	1,164	242,360	[2,362.5]	239,997.5	290,832,000	[1,500,000]	289,332,000
SF–3		94		31,725	31,725		38,070,000	38,070,000
SF–1		7		2,362.5	2,362.5		2,835,000	2,835,000
10–K	13,545	14,474	21,337,939	84,038	21,421,971	2,845,058,500	11,205,000	2,856,263,500
10–D	10,000	15,576	225,000	125,460	350,460	30,000,000	16,728,000	46,728,000
8–K	115,795	117,232	493,436	5,389	498,825	54,212,000	718,500	54,871,500
Asset Data		16,534		193,099	193,099		41,319,571	41,319,571
WCP		958		10,055	10,055		7,756,800	7,756,800
D	25,000	25,000	100,000		100,000	30,000,000		30,000,000
144A–SF		716		358	358		429,600	429,600
P–SF		9,308		171,498	171,498		58,144,976	58,144,976

12. Solicitation of Comments

We request comments in order to evaluate: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) the accuracy of our estimate of the burden of the proposed collection of information; (3) whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.[554] We also specifically request comment regarding:

- Whether and to what extent the proposed shelf eligibility requirements would cause a movement in filers that are currently eligible for shelf registration on Form S–3 out of shelf registration on proposed Form SF–3;
- For all types of asset classes that are subject to the proposed asset level data requirements, the cost of adjusting the sponsor's systems to meet the proposed requirements and the cost of preparing, tagging, and filing the information; and
- For credit card ABS issuers, whether any grouped asset data proposed to be required is not currently collected on existing sponsors' systems and what are the costs of preparing, tagging and filing such grouped asset data at the time of securitization and on an ongoing basis;
- To what extent the proposals to require more information relating to sales of privately-issued structured finance products in reliance on certain safe harbors would increase the number of hours that issuers of such securities already expend in providing information to investors.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing these burdens. Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–08–10. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–08–10, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XI. Benefit-Cost Analysis

A. Background

The proposed amendments to our regulations and forms for asset-backed securities relate to the offering process, disclosure and reporting requirements for these securities. We also are proposing amendments to safe harbor rules for exempt offerings and resales to require additional disclosure by ABS issuers. In this section, we examine the benefits and costs of our proposed rules in each of these areas. We request that commenters provide their views along with supporting data as to the benefits and costs of the proposed amendments.

First, we are proposing to revise shelf registration for ABS issuers and create new registration forms that would be applicable only to ABS offerings. Under the proposals, for ABS issuers that wish to register their offerings on a shelf basis, for offerings to be conducted after the shelf registration statement is effective, transaction-specific information relating to each offering of securities must be filed with the Commission at least five business days ahead of the first sale in the offering. We also are proposing to replace the existing shelf eligibility requirement that the securities must be investment grade rated by an NRSRO with alternate requirements. Instead of the investment grade ratings requirement, the following would be required for any offering off the shelf registration statement:

- The sponsor must retain a portion of each tranche of the securities sold in the offering, net of hedging and on an ongoing basis;
- The chief executive officer of the depositor must certify that the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus;
- The pooling and servicing agreement must contain a provision that would require third party review for assets that were not repurchased or replaced by an obligated party after being put back for breach of a representation or warranty; and
- The ABS issuer must undertake to file Exchange Act reports so long as non-affiliates of the depositor hold any of the issuer's securities sold in registered transactions.

We also are proposing to eliminate the exception from the 48-hour preliminary prospectus delivery requirement for ABS adopted in 2004 under Exchange Act 15c2–8(b), such that in connection with all issuances of ABS, regardless of whether the issuer has previously been required to file reports pursuant to Sections 13(a) or 15(d) of the Exchange

[554] We request comment pursuant to 44 U.S.C. 3506(c)(2)(B).

Act, or exempted from the reporting requirements by Section 12(h) of the Exchange Act, broker-dealers would be subject to the 48-hour preliminary prospectus delivery requirement. Further, we are proposing several revisions to enhance the disclosures made by asset-backed issuers in prospectuses and Exchange Act reports. For most asset classes, we are proposing to require information regarding each asset in the pool in addition to the existing requirements relating to pool-level disclosures. Issuers of ABS backed by credit card receivables would be required to provide grouped asset data. This information would be provided according to standardized definitions and filed with the Commission in XML. In addition, we are proposing to require that ABS issuers file a computer program on EDGAR that gives effect to the flow of funds, or "waterfall," of the transaction. This computer program would be required to provide users with the ability to input the asset data file and other assumptions.

We also are proposing revisions to our disclosure requirements for ABS issuers that would require, among other things:

- Additional information on exception loans;
- Enhanced static pool disclosure;
- Disclosure regarding the loans that were put back to the originator or sponsor for repurchase;
- Additional information regarding an originator, including its interest in the securitization and, to the extent there is material risk that the financial condition of the originator could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for assets, its financial condition;
- Additional information regarding a sponsor, including its interest in the securitization and, to the extent there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for assets or otherwise materially impact the pool, its financial condition;
- A description of the standards in the pooling and servicing agreement for modifying the terms of the underlying assets;
- A statement whether the pooling and servicing agreement contains a fraud representation; and
- The description of the flow of funds in a single place in the prospectus.

We also are proposing revisions to the definition of an asset-backed security to further restrict the type of security that may be sold under the framework set forth in Regulation AB. While securities that do not meet the proposed definition may still be registered with the Commission, an issuer may need to provide additional disclosure regarding the securities and consider issues that are not contemplated by Regulation AB. We are proposing to limit the amount of prefunding accounts and revolving periods that may be utilized under the definition, and we are proposing to exclude master trusts that are backed by non-revolving assets (*e.g.*, mortgages) from the definition.

We also address privately-issued structured finance products in our proposals. In order to foster additional transparency in the exempt securitization markets, we propose to require the issuer to agree to provide additional disclosure to the investor for any resale made under the Rule 144A safe harbor or offering under the Regulation D safe harbor. We also are proposing to amend the current public information requirement in Rule 144 to require that, in order to satisfy that requirement, in the case of a non-reporting ABS issuer, the issuer must agree to provide additional disclosure to the investor. In addition, we propose to require that the issuer file with the Commission a notice of the sales for the initial placement of securities that are to be sold under Rule 144A that provides basic information on the sale and a description of the securities sold.

B. Benefits

The proposed amendments are designed to increase investor protection by improving the disclosure and offering process of asset-backed securities, and thereby enhancing the transparency of the securitization market. This should result in an increase in investors' understanding of the underlying pool of assets.

In 2009, there were 87 registered ABS offerings as compared to 1,306 in 2004.[555] The market for securitized assets has suffered dramatically, in part due to the perception of inadequacies in the disclosure and transparency of the underlying pool of assets in the securitization process.[556] Securitization is a large component of borrowing and lending, which can benefit borrowers by lowering borrower costs.[557]

1. Securities Act Registration

The lack of time to adequately consider deal-specific information in an offering has been a longstanding concern of ABS investors, as discussed in the 2004 Adopting Release.[558] Based on our experience with the financial crisis, we continue to have concerns regarding the lack of time for investors to analyze asset-backed securities. By requiring that information about the specific offering be filed at least five business days before first sale, we seek to provide investors with the benefit of additional time to value and assess the issuance.

Unlike other types of securities, the payments on asset-backed securities primarily depend on the credit quality of the assets in the underlying pool. Each offering of asset-backed securities involves a new set of assets, which requires investment analysis to be done anew. Our proposal to require an issuer to file a form of preliminary prospectus at least five business days ahead of first sale seeks to give investors additional time to review offering documents without unduly burdening issuers.[559] We believe that this additional time will benefit investors by increasing their ability to assess an offering and to perform a better analysis of information provided by the parties to the securitization. This in turn should lead to better investment decisions.

We believe that investment grade credit ratings may no longer be an appropriate criterion for use as a shelf eligibility requirement for ABS.[560] In addition to promoting independent analysis, we believe that replacing investment grade ratings requirement for shelf eligibility conditions for ABS offerings would reduce the appearance that the Commission has placed an imprimatur on credit ratings.

Our proposed risk retention requirement for shelf-registration eligibility is aimed at better aligning the incentives of an ABS sponsor with those of investors. By doing so, risk retention provides investors with an assurance that the quality and characteristics of the underlying assets are consistent

[555] This is based on data from Asset-Backed Alert and information from Securities Data Corporation.

[556] *See, e.g.,* Group of Thirty, *Financial Reform: A Framework for Financial Stability* (Jan. 15, 2009).

[557] U.S. Securities and Exchange Commission, U.S. Department of Treasury, Congressional Budget Office and U.S. Small Business Administration, *An Interagency Report: Developing a Secondary Market For Small Business Loans* (August 1994), available at *http://www.cbo.gov/doc.cfm?index=5013&type=0.*

[558] *See* fn. 174 above.

[559] We are also proposing to repeal the exception for asset-backed securities from the 48-hour preliminary prospectus delivery requirement in Rule 15c2–8(b). The 48-hour preliminary prospectus delivery requirement would apply to all ABS issuers, including those exempted from the requirement to file reports pursuant to section 12(h) of the Exchange Act.

[560] *See* Liz Rappaport and Serena Ng, "Credit Ratings Now Optional," *Wall Street Journal,* Oct. 29, 2009 (noting sales of bonds and structuring of complex securities without credit ratings).

with the disclosures and representations of the sponsor. The proposed risk-retention requirement may also make it more likely that sponsors select assets of higher quality for the pool than they would have, absent the requirement. Thus, although we do not believe that risk retention would result in only investment-grade ABS being shelf-registered, we do nonetheless consider it an appropriate partial replacement for the existing shelf eligibility condition that ABS have investment-grade rating.

We are proposing to require the sponsor to retain five percent of each tranche, net of hedging and on an ongoing basis. Spreading the sponsor's economic interest across all tranches evenly is designed to better address the overall risk assessment and quality of the entire offering rather than only aspects that relate to a specific tranche. Risk retention in the amount of five percent of a tranche is aimed at increasing alignment of incentives of transaction participants in securitizations that will in turn lead to better performing securities without placing an undue burden on issuers.

We note that our proposal only mandates the minimum amount of risk that the issuer is required to retain to have access to shelf registration. A sponsor may voluntarily retain an amount in a tranche greater than that required by our proposed requirement, which could alter the alignment in incentives between the sponsor and the investor.

We also are proposing that, in the case of revolving exposures, a sponsor can meet the risk retention requirement by retaining the originator's interest of not less than five percent. This is proposed to accommodate the special structure of revolving asset master trusts. For example, credit card ABS issuers already retain a seller's percentage that is equivalent to a portion of the pool.[561] Allowing an alternative to the proposed vertical slice requirement for these particular ABS sponsors would benefit investors by allowing incentive alignment aimed at achieving better quality assets to be compatible with the nature of revolving assets.

Requiring the sponsor to meet the risk retention condition rather than the originator may provide benefits to both originators and investors. We are aware that smaller originators may not have the resources to retain such risks. In addition, by not placing the requirement on originators, these institutions could have greater capital resources available to make loans which could ultimately benefit borrowers and financial systems as a whole. We are also aware that implementing an originator-based risk retention requirement would be difficult in a securitization involving multiple originators and may unnecessarily increase the cost of such securitizations.

We believe that our proposal requiring the pooling and servicing agreement or other governing document for an ABS shelf transaction to contain a provision that requires third party loan review of loans that are not repurchased or replaced by the originator after being put back because of a breach in a representation or warranty should strengthen the enforcement mechanisms surrounding representations and warranties for shelf transactions. ABS investors have expressed concerns with the integrity and enforceability of bargained-for contractual provisions in underlying transaction documents ABS offerings.[562] By requiring that the third party be unaffiliated, investors can be better assured that the opinion as to whether a representation and warranty has been breached is impartial. This requirement, which strengthens enforcement mechanisms of representations and warranties, should incentivize obligated parties to better consider the characteristics and quality of the assets underlying the securities, making it an appropriate partial replacement for the existing shelf eligibility requirement that requires the securities to have an investment grade rating.

We believe our proposal to require a certification by the depositor's chief executive officer will focus the certifier on the transaction and the disclosure. Such certification should enhance investors' confidence in the securitization. We believe that a certification may cause these officials to review more carefully the disclosure, and in this case the transaction, and to participate more extensively in the oversight of the transaction making it an appropriate partial replacement for the existing shelf requirement relating to investment grade ratings.

Under Section 15(d) of the Exchange Act, investors in most asset-backed securities may not receive ongoing reporting pursuant to the Act, as most ABS issuers may have less than 300 record holders. Given recent history, we believe ongoing reporting for ABS is important even if the number of holders is low.[563] Our proposal to require that the issuer in an ABS shelf offering undertake to file Exchange Act reports would provide investors with ongoing access to information. Although some issuers already provide ongoing information to investors pursuant to transaction agreement provisions, we believe that our requirements and the undertaking would impose greater discipline on issuers to provide such information and thereby provide further transparency for investors, especially when combined with the proposed loan level disclosure requirements. Investors would benefit from greater transparency on the continuing performance, composition and disposition of assets which can be used to evaluate both their investment as well as the performance of sponsors and originators.

2. Disclosure

We believe that the proposed requirements for asset-level disclosures in XML format and with standardized data definitions will benefit investors in several important ways. First, such required disclosures should reduce investors' cost of information production by reducing duplicative efforts on their part to gather such data on their own or purchase it through data intermediaries. Although some ABS issuers currently provide asset-level data to investors, this is not the case across all asset classes. For example, issuers of certain asset classes, such as credit card receivables, dealer floorplans or equipment loans, typically do not consistently provide asset-level information. As discussed in further detail below, we are proposing an exemption from the asset-level disclosure requirement for a few asset classes. We are unaware of any publicly available data standards for asset classes other than mortgage-backed securities and currently there is no mandatory requirement that issuers follow any of these standards for reporting to investors in asset-backed securities.[564] For the ABS offerings of asset classes that fall within our proposed requirement, our proposal seeks to provide investors with consistent and equal access to asset-level information.

We believe that requiring the asset-level disclosures in XML format and utilizing standardized definitions of material loan, obligor, and collateral characteristics will further benefit investors. The machine-readable format should lower the cost of information processing, and the standardized

[561] The originator's interest, also known as the "seller's interest," also may serve an additional function of absorbing seasonal fluctuations in credit card receivables balance. *See* Fitch IBCA, *ABCs of Credit Card ABS,* July 17, 1998; Federal Deposit Insurance Corporation, *Manual on Credit Card ABS,* available at *http://www.fdic.gov/regulations/examinations/credit_card_securitization/.*

[562] *See* fn. 131 and accompanying text.

[563] *See* the Committee on Capital Markets Regulation Financial Crisis Report, at 152–153.

[564] *See* discussion in Section III.A.1. above.

definitions should increase comparability of information across issuers. Currently, one sponsor's use of a term in asset-level information may differ from another sponsor's use. For example, "reduced documentation" may not have the same meaning from one sponsor to another or from one originator to another. The XML format that is proposed to be required, along with the utilization of standardized definitions, should allow issuers to provide investors with asset-level information in an immediately usable format. Investors could promptly download and input this information into software tools for analysis of the assets in the underlying pool and pricing of the asset-backed securities.

This process will be further aided by the proposed requirement to provide a programming language representation of the ABS waterfall, which we refer to as the waterfall computer program requirement. This is intended to benefit investors by facilitating their ability to run simulations of expected cash flows under different prepayment, loss and loss-given-default assumptions, while obtaining the full benefit of the loan-level data that we are proposing to require. Requiring the filing of a programming language representation of the waterfall will provide information about the terms of the securities to investors in a form they can readily use for computerized valuation methods of ABS. This will make more relevant information available to investors and allow them to make better-informed investment choices.

The proposal should eliminate the transaction costs for single institutional investors individually to script the waterfall provisions into a programming language representation. This should reduce some of the information asymmetry between the sponsor and a prospective investor that arises because the sponsor, as the person creating the contractual cash flows has access to a programming language representation of the waterfall, a necessary element of ABS valuation using computer simulations of security performance, at the time of the initial public offering, and the investor does not.

Asset-level data in easy to use format and accompanied by the waterfall computer program will likely improve investors' ability to conduct independent analysis and reduce their reliance on credit ratings. With usable information on the composition of the asset pool, investors can evaluate the sponsor's disclosed characteristics of the pool. This, in turn, will allow them not only to price the issue more efficiently but to evaluate the investment potential of the issue better. Indeed, there is some evidence that a major benefit of asset-level disclosure, and more specifically borrower-characteristics disclosure, is an ability to price ABS more accurately.[565] In addition, if asset-level data reduces investors' uncertainty about the composition of the asset pool, investors should be willing to pay higher prices for the security.[566] We believe that the proposed grouped asset data requirement applicable to credit cards ABS issuers offers benefits similar to that of the proposed asset-level data requirements.

We also are proposing to require asset-level disclosure be provided on an ongoing basis. Ongoing disclosure of asset-level information should encourage better monitoring of the security by investors and other market participants. Such information would be useful for tracking the performance of the assets, as well as an assessment of performance of the originator, sponsor, or servicer. This would allow investors to continue their independent analysis of the asset-backed securities rather than rely on NRSRO credit ratings to alert them of changes in the ABS risk-return profile.

Our proposed asset-level information requirements, notably, are tailored by asset class. We have taken under consideration situations in which the amount of asset-level disclosure would be too voluminous, or investors are unlikely to find such disclosure meaningful. We have decided to modify these requirements or not impose them at all, if they do not appear to justify the compliance costs imposed on issuers. For example, instead of asset-level information, we propose to require that issuers of ABS backed by credit card receivables provide grouped asset data. Such issuers will be required to disclose information on the assets in the underlying pool by grouping these assets into different combinations of standardized pool characteristics. Similarly, we believe that the potential costs of requiring issuers of stranded-costs ABS to provide asset-level disclosures would not justify the benefits, so we are not proposing to require such disclosures.[567]

Our proposed enhancements to pool-level disclosure are intended to help elicit important information in areas that became problematic in the recent financial crisis, such as with respect to exception loans. We also are proposing to amend the definition of an asset-backed security to further restrict the type of securities that may utilize the framework provided in Regulation AB. We believe that the restrictions on exceptions to the discrete pool requirement of an asset-backed security benefits investors by maintaining the integrity of the discrete pool requirement and is consistent with investor demand for more meaningful asset-level data. Our proposed revisions to Item 6.05 of Form 8–K would require that issuers file a current report and provide pool information when there is a one percent or greater change in a material pool characteristic of the asset pool. These revisions to the rules, we believe, assist in closing existing gaps by which the asset pool composition could be changed significantly or without necessary accompanying disclosure. Investors will be able to evaluate the consequences of asset pool composition changes in order to determine the continuing suitability of the investment.

Certain of the proposed disclosure requirements should benefit investors by helping them to more easily and effectively assess the structure of the ABS transaction and the parties involved. For example, where assets have been put back to an originator or sponsor in the offering in the last three years and those assets have not been repurchased or replaced, we are proposing to require disclosure of the number of those assets that have not been repurchased or replaced. Similarly,

[565] *See* Joshua Rosner, "Securitization: Taming the Wild West," in Roosevelt Institute, *Make Markets be Markets* (Mar. 3, 2010) at 77 (stating that "In order to accurately price securities, investors need timely loan-level information on the assets backing each deal"). *See also* Paul Bennett, Richard Peach, Stavros Peristiani, "How Much Mortgage Pool Information Do Investors Need?," *The Journal of Fixed Income,* June 2001, Vol. 11, No. 1, at 8–15.

[566] Information uncertainty tends to increase credit spreads. Yu (2005) and Sengupta (1998) show that the cost of bond financing increases as the borrowing firm's accounting reports become less informative. Yu, F., "Accounting Transparency and the Term Structure of Credit Spreads," *Journal of Financial Economics* (2005) at 75, 53–84. Sengupta, P., "Corporate Disclosure Quality and the Cost of Debt," *Accounting Review* (1998) at 73, 459–474. Güntay and Hackbarth (2006) find that higher dispersion of analysts' forecasts is associated with significantly higher bond spreads. Güntay, L. and D. Hackbarth, "Corporate Bond Credit Spreads and Forecast Dispersion," working paper: Washington University—St. Louis (2006). Thompson and Vaz (1990) document that credit-rating agency disagreements on a firm's credit rating also widens bond credit spreads even after controlling for the firm's default risk. Thompson, G. R. and P. Vaz, "Dual Bond Ratings: A Test of the Certification Function of Rating Agencies," *Financial Review* (1990) at 25, 457–471. Finally, Wittenberg-Moerman (2007) documents that loan rates are higher for firms with higher bid-ask spreads on loans traded in the secondary market. Wittenberg-Moerman, Regina, "The Impact of Information Asymmetry on Debt Pricing and Maturity," working paper: The Wharton School, University of Pennsylvania (2007).

[567] *See* Sections III.A.1.b.iv and III.A.2.b above.

disclosure on the originator's and sponsor's financial condition where material, as provided in the proposal, should benefit investors by allowing them to assess whether the condition of the originator or sponsor may have bearing on their ability to make payments relating to their repurchase obligations. Our proposed requirement relating to disclosure of a fraud representation in the transaction documents would allow an investor to consider the existence of the representation (or lack thereof) in making an investment decision. Finally, our proposed disclosure requirement relating to the originator's and sponsor's interest in the securitization program, including risk retention, would allow an investor to better consider the incentive structure and other possible risks relating to such party.

We also have several proposals relating to the presentation of information in the prospectus for ABS offerings, including our proposal on the flow of funds, our proposal eliminating the use of a base prospectus and accompanying prospectus supplement, and our proposed revisions to the static pool information requirements. Through such proposals, we seek to improve the presentation of information in ABS offering materials, which may be unwieldy and contain duplicative disclosure, jargon or discussion inapplicable to the specific transaction at hand. These proposed revisions aim to facilitate more ready access to the information for investors and other market participants.

In addition, in coordination with the expiration of the temporary accommodation in Rule 312 allowing ABS issuers to file static pool information on an Internet Web site, issuers would need to file static pool information with the Commission. We are proposing to permit that such information be filed in PDF format. Implementation of the requirement to file static pool information on EDGAR addresses concerns relating to the maintenance of Web sites and the presentation of static pool information while our proposal to allow issuers to file such information in PDF format would allow this disclosure to be provided to investors in an easy to read format.

3. Privately-Issued Structured Finance Products

Many ABS and similar structured finance products are offered and resold in reliance on the Rule 144A safe harbor.[568] Rule 144A is a safe harbor from being deemed an underwriter within the meaning of Sections 2(a)(11) and 4(1) of the Securities Act for the resale of securities to qualified institutional buyers. Many of the types of asset-backed securities that caused significant concern in the financial crisis included securities that are typically sold in private transactions.[569] Our proposal to require more disclosure for privately-issued structured finance products are designed to provide investors in such securities, which can have complex incentive structures among various parties and whose valuation is dependent on an understanding of the assets in the underlying pool, with better information than they currently receive.

Our proposal to require a notice of sales for the initial placement of securities to be sold in reliance on Rule 144A, we believe, would improve transparency in the asset-backed securitization market. This notice could in turn help regulators with monitoring developments in the securitization market and determining whether future rulemaking or other actions with regard to asset-backed securities may be necessary. This notice could also have the additional benefit of supporting the Commission's efforts to enforce the federal securities laws relating to asset-backed securities. The items proposed to be added to Form D for asset-backed issuers would have similar benefits to the extent ABS issuers rely on Rule 506 of Regulation D.

C. Costs

Our proposals for asset-backed securities are designed to improve disclosure to ABS investors but would impose costs on ABS issuers and other participants in the chain of securitization in various ways. The proposals to revise shelf registration and to replace the investment grade ratings requirement for shelf eligibility would impose additional costs on ABS issuers offering securities through shelf registration. Sponsors of shelf registered issuers would also incur direct costs, as a result of the proposed risk retention shelf eligibility condition that would require the sponsor to retain and maintain five percent of each tranche, or, in the case of revolving assets, five percent of the pool.

Some of the proposed disclosure requirements refine existing disclosure requirements; however the proposal to require standardized asset-level information or grouped asset data and to provide a computerized program of the issue's waterfall are new disclosure requirements, and thus issuers would be required to incur additional costs to which they were previously not subject. Our proposals relating to the disclosure by privately-issued structured finance product issuers would impose additional costs on such issuers seeking to rely on certain regulatory safe harbors.

1. Securities Act Registration

The proposed requirement to file a form of preliminary prospectus at least five business days before the date of first sale and the proposed requirement that brokers deliver a preliminary prospectus 48 hours ahead of sale would require that issuers provide information to investors earlier in the process than is currently the case. During that period, issuers may be exposed to the risk of changing market conditions; however, such uncertainty is similar to that faced by other issuers of underwritten initial public offerings of debt whose final offer prices are not set for weeks or months after filing.

The two methods to satisfy the risk retention shelf eligibility condition that we are proposing to allow for shelf eligibility may increase costs of securitization to sponsors. We note, however, if issuers find the cost of risk retention too high, ABS offerings could be registered without being subject to a risk retention requirement, as long as such offerings are registered on proposed Form SF–1. For purposes of PRA analysis, we estimate the total movement out of the shelf registration system to be 10% of the current number of shelf offerings, although not all of this movement is estimated to move to proposed Form SF–1 and some may move to private markets.

We also note that the risk retention shelf eligibility condition may impact the risk management process of a sponsor. Some financial institutions are impacted through requirements to hold capital against the risk to which they are exposed, which would put them at a disadvantage to other institutions. Reserving capital for risk retention reduces the amount of funds available for lending which will increase a borrower's cost of funds. Any such reduction in lending capacity suffered by the ABS issuer may be passed through to the financial institution's investors and customers as a cost of the securitization process.

[568] *See, e.g.,* SEC Staff Report, "Enhancing Disclosure in the Mortgage-Backed Securities Markets," (Jan. 2003), available at *http://www.sec.gov/news/studies/mortgagebacked.htm* (noting that almost all private-label MBS that are not sold pursuant to a registration statement are sold in the 144A market).

[569] *See* discussion in Section VI. above.

In addition, as we noted in our PRA estimates, while we are not imposing additional disclosure requirements for the Form 10–K for sponsors, they may incur some additional costs in preparing their annual reports in determining the impact of the required risk retention on their disclosure. We estimate, for purposes of the PRA, that sponsors will need an additional 10 hours to prepare their Form 10–K filings at a total cost of $2,500 per sponsor.[570]

Also, under our proposed shelf eligibility conditions, issuers in shelf registrations would be subject to additional costs of hiring a third party to review assets that have been put back to an obligated party, usually the sponsor or originator, for breach of the representation and warranties. Additionally, the value of these opinions is dependent on investors' perception of the expertise of the entity providing the opinion. This proposed shelf eligibility condition also might create incentives for originators or sponsors to agree to repurchase or replace assets that have been put back to them even in cases where these assets were not in breach. Under our proposals, ABS offerings that are shelf registered would be required to include a certification signed by the depositor's chief executive officer regarding the characteristics of the assets, which will impose some additional disclosure burden.

Our proposed shelf eligibility condition to require ABS issuers to undertake to file Exchange Act reports would also impose certain costs on ABS issuers on shelf. The Exchange Act reporting requirements for ABS issuers take into account existing reporting obligations to investors required under ABS transaction agreements. Many ABS transaction agreements contemplate continued reporting to investors, but those reports, while provided to investors, are not required to be filed if the issuer has suspended its Exchange Act reporting obligation. Because our proposal would require the issuers to undertake to file reports with the Commission, an ABS issuer registered on shelf would include additional costs to file ongoing information with the Commission. Certain types of asset-backed securities, such as ABS backed by credit cards, continue to issue securities backed by the same pool, and thus are required to continue to report on an ongoing basis, and thus would not incur additional costs as a result of the proposed amendments. Other asset-backed securities are exchange-listed and are subject to the reporting requirements of Section 12(b) of the Exchange Act, and thus our proposal would not impose additional costs of them. We estimate in the PRA that the incremental cost of the proposed changes relating to Exchange Act reporting is $71,628,900.[571]

These proposed shelf eligibility conditions would replace, in part, the prior reliance on investment grade ratings as a condition for shelf eligibility. A potential cost of this substitution is that investors may incorrectly believe that these requirements are an indication that shelf registrations are, effectively, investment grade offers. Under the proposed requirements, securitizations would be eligible for shelf registration if they meet the rule's requirements regardless of their credit rating, which may or may not be investment grade.

The costs associated with both the shelf registration requirements and asset-level disclosures detailed above could be passed down the chain of securitization. If the market is much more concentrated at the sponsor level than at the originator level, sponsors may be able to pass on to originators some of the costs of our proposals. Originators could, in turn, pass some of these costs onto borrowers, although their ability to do so might be constrained by competition from non-securitizing lenders.

2. Disclosure

Although some issuers currently provide asset-level information, this is not a consistent practice across all issuers.[572] Our proposals to require disclosure of asset-level information are designed to provide, investors with equal access to such information with certain exceptions discussed below. This will lead to additional costs being imposed on sponsors to compile and report asset-level data. As noted in the PRA, we estimate that it will cost issuers $79,939,291 to compile and report asset-level information.[573]

Where we believe individual asset-level disclosures would be overly burdensome and of little utility to investors, we are proposing to require less granular disclosures or no disclosures altogether. For instance, credit-card ABS are backed by millions of accounts. For this ABS class, asset-level disclosures likely would produce an overwhelming amount of data, which we believe would not be useful for investors. Thus, we are proposing that issuers of ABS backed by credit and charge card receivables provide information on the assets in the underlying pool grouped along specified standardized dimensions. Based on similar considerations, we propose to exclude from the required asset-level disclosures issuers of ABS backed by stranded costs.

Our proposed standard definitions for asset-level information are similar to, and in part based on, other standards that have been developed by the industry, such as those developed under ASF's Project RESTART or those developed by CRE Finance Council. Because these proposed standard definitions employ widely used metrics for asset-level information, we also believe that these standards should be similar to other standards used for reporting purposes, including the mortgage metrics that national banks and thrifts must provide to the Office of Comptroller of the Currency and the Office of Thrift Supervision.[574] To the extent that there are differences between standards on the same information, additional costs would be imposed on issuers and servicers to track the differences between one standard and another. Further, servicers may incur some costs in monitoring their compliance with servicing criteria and requirements under the servicing agreement with respect to reports on asset-level information.

Under the proposed requirements, issuers of ABS would be subject to additional ongoing asset-level or

[570] This estimate is based on the estimated total burden hours of the amendments associated with the schedules and forms that would include the new disclosure, an assumed 75%/25% split of the burden hours between internal staff and external professionals with respect to proxy and information statements, an assumed 25%/75% split of the burden hours between internal staff and external professionals with respect to registration statements, and an hourly rate of $200 for internal staff time and $400 for external professionals.

[571] This amount is calculated using the increases in burden hours for Form 10–K, Form 10–D, and Form 8–K from the PRA. We allocate 75% of these hours to issuer internal costs at a rate of $200 per hour and 25% to professional costs at a rate of $400 per hour.

[572] For example, CMBS issuers frequently provide loan-level information in accordance with industry standards. *See* fn. 224 above and accompanying text. RMBS issuers sometimes file loan-level mortgage schedules with the Commission or provide loan-level information to rating agencies. *See, e.g.,* "Moody's Proposes Enhancements to Non-Prime RMBS Securitization," *Structured Finance Special Report,*" Sept. 25, 2008. It is suggested that certain of the issuers of securities backed by auto loans provide loan-level information. *See* "S&P's Auto Loan-Level Model Enhances Understanding of Loss Performance," *Structured Finance,* available at *http://www.vehiclefinanceconference.com/pdf/handout5.pdf.*

[573] The dollar cost of $42,619,856.5 is calculated by multiplying 110,086.5 internal burden hours by $200 per hour for internal costs and then adding $20,602,562.5.

[574] *See* OCC Press Release NR 2008–24, "OCC to Require Data from Large Bank Mortgage Servicers," February 29, 2008 and Letter to National Bank Mortgage Servicers dated February 29, 2008.

grouped asset disclosure requirements. Because we believe the information required already should be available, we do not expect significant increase in information gathering costs. However, we do believe that the costs discussed above of reconciling variable definitions, tagging required asset data and filing information with the Commission will be incurred in the process of continued reporting.[575] For purposes of our PRA analysis, we estimate that after the sponsor has incurred initial setup costs and after it has made its first filing, ongoing asset-level disclosure requirements would impose an additional cost of 10 burden hours per filing, which is equivalent to $2,125.[576]

The proposed requirements for asset data disclosure might have important implications for originators' ability to remain competitive and retain their lending market share. Once detailed data on borrower characteristics matched to loan terms becomes publicly available in XML format, a disclosing originator's competitors may be able to more easily infer its loan pricing model and might use the data to increase their own market share at the disclosing originator's expense. This may have an adverse impact on the profitability of credit institutions that choose to securitize some of the credit they extend.

Disclosures about an originator's or a sponsor's refusal to repurchase or replace assets put back to them for breach of representations and warranties (as well as the proposed third party opinion shelf eligibility condition, as noted above) might create incentives for originators to agree to repurchase or replace such assets even in cases where these assets were not in breach. If investors regard such disclosures as indicative of a willingness to comply with representations and warranties in the future, then originators or sponsors might try to preserve their reputation by taking back assets even when they do not have to do so. This might create an incentive for sponsors and possibly trustees to ask for repurchase or replacement of poorly performing assets that represent no breach of representations or warranties.

The proposed requirement to provide a programming language representation of the waterfall computer program would facilitate the ability of ABS investors to meaningfully use the asset data disclosed by the ABS issuer at the time of the public offering and with the monthly or other periodical distribution reports on Form 10–D filed with the Commission. We believe that the sponsor of an ABS generally will have in its possession at the time of the public offering a representation in computer programming language of the waterfall. However, additional time and expense will be involved in filing this computer programming language as source code on EDGAR concurrently with the filing of the Rule 424 prospectus, as the waterfall computer program may have to be subjected to additional review before it is filed with the Commission. We are proposing to exempt issuers of offerings backed by stranded costs from the proposed requirement, as they are not required to provide asset-level information under the proposal. As discussed in the PRA section, we believe that initial startup costs for preparing waterfall computer program for ABS would be approximately 672 burden hours per sponsor at a cost of $159,600.[577] Also in our PRA analysis, we estimate the ongoing costs associated with converting the waterfall computer program to the necessary format to be two hours per securitization, which equals $700.[578]

The asset data and waterfall computer program disclosure requirements might impose costs on entities other than the securitization participants. Making such information available to the public for free may adversely impact the business model of firms currently selling such information to investors. If waterfall formulas are available to investors free of charge, in program form, investors may face a reduced incentive to purchase existing products that provide essentially the same service.

Sponsors may face costs in addition to the initial and ongoing mechanical costs of waterfall preparation. Increased product transparency may reduce some effects of product complexity, potentially enabling investors to more accurately value securities. The resulting price transparency may place new constraints on sponsors' latitude in pricing the products, potentially lowering the profitability of bringing ABS to market.

Rating agencies may also face costs related to implementation of the waterfall computer program requirement. To the extent that rating agency analysis has served as a proxy, for some investors, for in-depth modeling, investors may rely less on this analysis as a result of being more readily able to perform their own calculations, potentially on an automated basis.

We believe that our proposals to amend the discrete pool exception in the Regulation AB definition of an asset-backed security, for the most part, only carve back on outlier structures and should result in little cost to asset-backed issuers.[579] Our proposed revisions to the Regulation AB definition of an asset-backed security should be minimal, and, if adopted, a security that does not meet the new Regulation AB definition of an asset-backed security could still register with the Commission as long as additional, suitable disclosure is provided regarding the offering, the securities and transaction parties.

We note that our proposals to revise the pool-level information requirements and information requirements on originators and sponsors further refine the disclosure requirements rather than impose significant burdens, which is why we expect no material increase in compliance costs. Our proposal to eliminate the base prospectus and prospectus supplement format for ABS issuers may cause a small increase in the number of registration statements filed with the Commission and a corresponding increase in the cost to issuers to prepare and file such registration statements. In addition, this proposal and our proposal to require the filing of a post-effective amendment for additional structural features or credit enhancements could increase some compliance costs for ABS issuers. However, we believe that our proposal to allow ABS issuers to use a "pay-as-you-go" registration system for each offering would offset some of those costs by providing ABS issuers with greater flexibility that would improve the

[575] We note that the CRE Finance Council is now requiring that asset-level information for commercial mortgage-backed securities be provided in XML. *See* CRE Finance Council Investor Reporting Package x 6.0 Preliminary Exposure Draft #1, Jan. 1, 2009, available at *http://www.crefc.org/*. In this regard, issuers of commercial mortgage-backed securities may already be subject to the costs of XML data tagging.

[576] We allocate 75% of the hours to issuer internal costs at a rate of $200 per hour and 25% to professional costs at a rate of $250 per hour.

[577] To calculate the total dollar costs, we allocate 25% of these hours to issuer internal costs at a rate of $200 per hour and 75% to computer programmer costs at a rate of $250 per hour.

[578] To calculate the total dollar costs, we allocated 25% of these hours to issuer internal costs at a rate of $200 per hour and 75% of outside professional costs at a rate of $400 per hour.

[579] We are aware of only four issuers backed by non-revolving assets that utilize the master trust structure. Based on staff review, we believe that use of prefunding accounts is generally limited to select sponsors, approximately 25 percent or less of the principal balance or proceeds are set aside for prefunding for those select sponsors, and the prefunding period in those cases generally extends for approximately one year. In addition, we believe that revolving periods are not widely used across asset classes or by stand-alone amortizing trust structures.

utility of shelf registration, increase efficiency and thereby ultimately reduce costs for issuers.

3. Privately-Issued Structured Finance Products

The costs of complying with the shelf registration requirements may make alternate offering mechanisms, such as private placements or exempt offerings more attractive. To improve investor protection in these types of offerings, our proposed regulations would give investors the right to obtain the same level of disclosure as required in a registered Form S–1 or proposed Form SF–1 offering (and ongoing information that would be required if the issuer were subject to Exchange Act reporting obligations) when sales are made in reliance on Rule 506 of Regulation D or resales are made in reliance on Rule 144A. We also are proposing to require that transaction agreements contain a provision by which the issuer promises and represents to provide this disclosure to investors and prospective purchasers upon request.

While the costs to implementing this new information requirement may be significant to ABS issuers, we believe that such costs are justified in light of the role that privately-placed issued ABS played in the financial crisis. We believe that the recent financial crisis exposed deficiencies in the information available about CDOs and other privately-issued structured finance products.[580] Not only does it appear that these instruments were not well understood by investors, but market participants and regulators did not have access to important information about this significant component of the capital markets.[581] We also recognize that the additional proposed requirements that would be imposed on issuers who wish to rely on the safe harbors may possibly result in changes in the number of ABS offerings and increased use of offshore ABS offerings. For purposes of PRA analysis, we estimate for that total annual number of internal burden hours that would be imposed by the proposed amendments is 171,498 hours, while the total annual external cost estimate is be $58,144,976.

We believe that costs of the proposed requirement that issuers file a notice of sales for the initial placement of securities to be sold in reliance on Rule 144A should be minimal. In addition, we are proposing to add disclosure requirements specific to ABS issuers to Form D. For purposes of PRA, we estimate that proposed requirement on issuers to file Form 144A–SF would take approximately two hours per response per year at a total dollar cost of $700.[582] For purposes of the PRA, the added requirements to Form D would not increase the current four-hour estimate for completing the form.

D. Request for Comment

We seek comments and empirical data on all aspects of this Benefit-Cost Analysis including identification and quantification of any additional costs and benefits. Specifically, we ask the following:

- Would the required risk retention threshold for shelf eligibility be overly burdensome on issuers? If yes, please provide both qualitative and quantitative information to support your position.
- How does the proposed level of risk retention for shelf eligibility differ from current industry standards?
- Are there other more cost-effective ways we can accommodate issuer practices with respect to risk retention in order to lower overall costs without jeopardizing interest alignment?
- Who will bear the costs of the risk retention shelf eligibility condition? How would the proposed risk retention shelf eligibility condition impact borrowers?
- Would the proposed risk retention shelf eligibility condition impose costs in addition to those identified above, such as costs arising from systems changes and restructuring business practices to account for the new risk retention requirements?
- Are the cost estimates per ABS issuance estimated by the Commission in line with industry's expectations?
- Would these proposals affect originators by making publicly available asset data that makes it possible to infer their loan pricing model? Is it possible to quantify or mitigate such effects?
- Do you believe that the proposed disclosure requirements will impose costs on other market participants, including firms that currently provide asset-level data information and waterfall computer code for a fee?
- Do the proposed disclosure requirements strike an appropriate balance in requiring sufficient pool-level information? Do you believe that providing more pool-level information will affect investors' willingness to analyze the individual assets comprising the pool? If so, what might be the consequences of such an outcome?
- Are our estimates for costs of disclosing and tagging asset data file appropriate?
- What type of burden would the proposed waterfall computer program requirement impose on ABS issuers? What is the magnitude of that burden?
- What are the costs of our proposal to require that more information be disclosed to the investor when a sale is made in reliance on the Rule 144A or Regulation D safe harbors? Are those costs justified by the benefits provided by the proposals?

XII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a) of the Exchange Act[583] requires the Commission, when making rules and regulations under the Exchange Act, to consider the impact a new rule would have on competition. 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. Section 2(b) of the Securities Act[584] and Section 3(f) of the Exchange Act[585] require the Commission, when engaging in rulemaking that requires it to consider whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. Below, we address these issues for each of the proposed substantive changes to ABS offerings.

A. Shelf Registration Requirements

1. Risk Retention

The impact of our proposed shelf eligibility condition to require that issuers retain a certain amount of risk in each tranche of the securitization is similar to the existing regulations imposed by the EU. Under EU

[580] *See* the 2008 CRMPG III Report, at 53.

[581] *See* testimony of Joseph Mason, "Hearing on the Role of Credit Rating Agencies In the Structured Finance Market," Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services United States House of Representatives (Sept. 27, 2007) (proposing a resolution to information asymmetry for structured finance investments, including CDOs, through changing the manner in which information is gathered by accountants and regulators and disseminated to market participants by ratings agencies and markets). *See also* Anna Katherine Barnett-Hart, "The Story of the CDO Market Meltdown: An Empirical Analysis" (Mar. 19, 2009) (discussing mis-rating of CDOs and failure of all market participants, from investment banks to hedge funds, to understand risk of CDOs) at 3, 40.

[582] We allocate 25% of the hours to issuer internal costs at a rate of $200 per hour and 75% to professional costs at a rate of $400 per hour.

[583] 15 U.S.C. 78w(a).

[584] 15 U.S.C. 77b(b).

[585] 15 U.S.C. 78c(f).

regulations, certain investing institutions may not hold a position in asset-backed securities unless the sponsor or originator agrees to retain a certain amount of the exposures in the securitization. Because the EU- and the U.S.-issued shelf registered ABS (which had comprised most of the publicly offered ABS market) would then have comparable risk retention features, our proposed shelf eligibility condition should not cause a reduction in U.S. competitiveness from the status quo that existed prior to the current EU regulations.

Risk retention may have the additional effect on capital adequacy for those issuers who are subject to the regulatory capital requirements. The risk retention requirement may put sponsors subject to regulatory capital requirements at a competitive disadvantage with those who are not.

In addition, we recognize that some issuers may not wish to retain risk and requiring those issuers to retain risk in order to conduct a shelf offering could reduce the investment alternatives available to investors. Therefore, our proposal would allow an issuer to register an offering on proposed Form SF–1 without retaining risk. The tradeoff facing the issuer is that offers on proposed Form SF–1 would likely have a longer wait before being able to go to market, for instance possibly waiting for the registration statement to be declared effective for 60 to 90 days compared to five business days for the proposed revised shelf registration procedures. The amount of time in non-shelf registration is greater than that of shelf offerings in order to allow the Commission staff the ability to review and comment on the filing and give investors additional time to consider the issue and make a better informed investment decision. These features of our proposal could have the pro-competitive effect of providing more alternatives to issuers. Alternatively, some or all issuers could decide that registration is not an acceptable alternative, which could result in fewer alternatives for investors.

The proposed risk retention shelf eligibility condition promotes capital formation and efficiency by improving the alignment of sponsors' interest with that of investors. This could result in an allocation of capital to the most productive uses and lead to gains in overall economic efficiency.

2. Representations and Warranties in Pooling and Servicing Agreements

One of the problems in the ABS market that was highlighted during the financial crisis is the inability to efficiently enforce contractual provisions and unilateral modification of those ABS provisions. Our proposed ABS shelf eligibility condition relating to the representations and warranties stated in a pooling and servicing agreement promotes a better understanding of the enforceability of those representations and warranties. As a result, investors should have greater certainty and transparency about the consequences of breaches of the representations and warranties. With respect to shelf offerings of ABS, all other things equal, this proposal is competitively neutral.

3. Depositor's Chief Executive Officer Certification

Our ABS shelf eligibility condition that the chief executive officer of the depositor certify that to his or her knowledge the assets have characteristics that provide a reasonable basis to believe that the underlying pool of assets will produce cash flows at times and in amounts necessary to service payments on the securities as described in the prospectus promotes capital formation by providing investors in shelf offerings with additional assurance that the sponsor has performed the necessary evaluation of the underlying assets and this evaluation is consistent with the disclosure provided in the prospectus.

4. Ongoing Exchange Act Reporting

Our proposals would require that issuers of ABS using shelf registration provide ongoing Exchange Act reporting. We believe that this will promote both efficiency and capital formation by making information useful for monitoring and assessing the performance of both the assets and the sponsor available to investors and the markets in general. More public information on an ongoing basis should assist investors to make better informed decisions on how to allocate capital, and should promote allocational efficiency by enabling investors to better match their preferences for risk and return.

5. Eliminate Ratings Requirement

We propose to eliminate the current ABS shelf eligibility condition that relies on the ratings provided by an NRSRO. Our proposal, however, does not prohibit an investor from using a credit rating in its investment decision in an offering under a shelf registration statement if they should find this information useful. Rather, we would be eliminating the reference to credit ratings in our rules in order to reduce the likelihood of undue reliance and remove the appearance of an imprimatur that such references may create. This is designed to decrease the appearance that we sanction the use of ratings over investor analysis in an investment decision. We believe that doing so promotes investor protection by reducing the possibility that our rules encourage investors to rely unduly on ratings [586] rather than conduct their own analysis of the securities. If the proposals are adopted, investors may still utilize ratings. It is also possible that ABS sponsors will continue to have their offerings rated. Even if ratings agencies see a decline in their business due to this regulation and other information being made available by sponsors, we believe that the benefits of the proposals would justify these potential indirect costs. The proposals provide an efficient means of assessing the quality and character of ABS shelf offerings, which thus would not impose a burden on competition.

B. Five-Business Day Filing and Prospectus Delivery Requirements

In the case of shelf registration, once the registration statement is effective, we are effectively proposing to increase the time that issuers are required to provide information about the offering from no minimum to at least five business days before first sale in the offering off the shelf. This additional time is designed to provide investors with additional time to analyze and understand the risk profile of the securities being offered and to make more informed and better investment decisions that will improve pricing efficiency, and should assist investors to make better informed decisions on how to allocate capital.

Our proposal to require brokers to provide investors with a preliminary prospectus at least 48 hours before confirmations are sent would apply to all registered ABS offerings, regardless of whether they are made under a shelf registration statement. Given that each ABS offering requires a consideration of new and different assets, we propose to treat ABS offerings in this regard similarly to any other initial public offering of securities. Because all registered ABS offerings will have the

[586] In other recent actions, we have addressed significant issues relating to the credit ratings process by an NRSO, seeking to improve the transparency relating to ratings shopping, methodologies of rating the securities. *See Amendments to Rules for Nationally Recognized Statistical Rating Organizations,* Release No. 34–61050 (Nov. 23, 2009); *Credit Ratings Disclosure,* Release No. 33–9070 (Oct. 7, 2009) [74 FR 53086]; *Proposed Rules for Nationally Recognized Statistical Rating Organizations,* Release No. 34–61051 (Nov. 23, 2009)[74 FR 63866].

same requirement, this proposal is competitively neutral with respect to all public issuers.

C. Disclosure

As a result of the financial crisis and subsequent events, the market for securitized assets has suffered dramatically due, in part, to the recession, lower housing prices and increased consumer debt load—but also because of perceived problems in the securitization process that affected investors' willingness to participate in these issues. Increased transparency of the underlying assets is valuable because it provides better information that should allow the market to price these products more accurately. Greater disclosure should give investors better tools to evaluate the underlying assets and to determine whether or not to invest in the instrument and at what price. By doing so, the Commission intends to promote efficient capital allocation. Consequently, each of these regulations, described individually below, should provide the following:

- Productive efficiency: The underwriter and sponsor are in the best position to be the lowest cost providers of the loan level information that we are proposing. Making such information available will reduce the amount of investor and third party research that is repetitive. Requiring that this data be easily machine-readable will allow parties to perform, at relatively low cost, larger scale analysis than now occurs.
- *Allocational efficiency:* Investors will be better able to match their risk/return preferences with ABS issues having the same risk return profile;
- *Capital formation:* Better disclosure should increase demand for these securities that will then be used to increase capital formation.[587]

We note that some of our proposals refine rules to provide investors with a better understanding of the offering, the transaction parties, or the material characteristics of the pool assets, including the underwriting of the assets. These proposals do not significantly change the framework that exists under our current rules for asset-backed securities.

1. Asset Data File and Waterfall Computer Program

Under our proposed asset-level disclosure requirements, issuers would be required to provide certain standardized information on each asset that is in the pool underlying the securities, or on standardized groupings in the case of credit card receivables. Such information would not only be required at the time of securitization but also on an ongoing basis. This should be an efficiency-enhancing requirement because issuers and underwriters have ready access to the asset-level information that we propose be provided; consequently, the information will be publicized by the lowest cost provider. As evidence that this is not an onerous burden, some issuers already provide much of the information to investors (although such information is not standardized). Nonetheless, where we believe the costs in providing this information may not be justified in light of the limited benefit to investors and with consequent potentially negative effects on efficiency, competition and/or capital formation, we are proposing to exclude those issuers from the asset-level requirements, or, in the case of credit card ABS issuers, to modify the approach. Asset data file information requirements are proposed to be applied equally to shelf eligible and non-shelf eligible offerings alike, thus applying the burdens equally to all publicly offered ABS issuers.

As described in the Benefit-Cost section above, the proposed asset-level disclosure requirements are likely to increase competition in lending markets by making information more cheaply available. Large datasets of loan-level information on credit terms and borrower characteristics are now available—but often at a considerable cost to subscribers and with incomplete information for some mortgage originators of the loans in the underlying pool. The data can be used to reverse engineer an originator's lending strategy in general or loan-pricing model in particular. Such information can be used by lenders to compete more effectively and even more generally can lower barriers to entry into geographic or product lending markets. By making this information more cheaply available, small loan originators may have access in the future to data that only the larger institutions could afford. As such, the provision of this data will be pro-competitive in lending markets.

We are mindful that forced disclosure of detailed information may create disincentives for innovation. At the present time, however, asset-level data are sometimes available from third party vendors for a price. Consequently, there should be little incremental effect on innovation from our proposed disclosure requirement.

We expect that the proposed asset-level and waterfall-computer-program disclosure requirements may negatively impact the profitability of providers of similar information and products currently being marketed. If the individual-asset data and cash-flow generating code are available free of charge, investors will no longer have the incentive to purchase similar products from third party vendors. Thus, some data vendor product market share may be negatively impacted by our requirements. However, the free availability of this data could give rise to new products from third party vendors who will offer data analyses, data analysis services and even user software to process the data that has features absent from the proposed waterfall computer program requirement.

Our proposals should benefit consumers because, first, the same information will be available at lower cost than is now the case and, second, we expect to see innovations in information processing and delivery to provide insights to investors that may now be prohibitive.

2. Pay-As-You-Go Registration and Revisions to Registration Process

Some of our proposals are directed at the format and presentation in which information is provided to investors to facilitate analysis of offering materials and, thus, promote more efficient capital formation through greater understanding of ABS. For example, we propose to eliminate the base prospectus and prospectus supplement format for disclosure. We believe that this should significantly improve disclosure for investors. While we acknowledge that the proposal may increase costs for issuers by increasing the number of registration statements that must be filed, our proposal to allow a "pay-as-you-go" registration system for ABS issuers should help to offset those costs and thereby improve efficiency for ABS issuers.

[587] Indeed, this was the original motivation for the Securities Act of 1933 and the Securities Exchange Act of 1934. Investing had all but ceased in the Great Depression. The conceptual framework for these laws was that increased disclosure would promote ethical behavior in the securities industry leading to greater investor confidence leading, in turn, to more investment and capital formation. Revitalization of the securitization market through additional disclosure has also been espoused by others. *See, e.g.,* Ralph Atkins and David Oakley, "Disclosure move aims to revive ABS market," *Financial Times,* May 17, 2009 (European Central Bank pushing for an increase in the amount of information that has to be disclosed about asset-backed securities as part of efforts to revive ABS market and encourage investors that have been deterred for lack of transparency in the market to buy asset-backed securities) and European Central Bank, *Public consultation on the provision of ABS loan-level information in the Eurosystem collateral framework,* available at *http://www.ecb.int/paym/cons/previous/html/abs.en.html.*

3. Restrictions on Use of Regulation AB

Part of our proposed changes would change the definition of an asset-backed security to restrict the types of structures that could be utilized under the Regulation AB framework. The proposed revisions should impact only a few offerings. Inasmuch as this is basically delineating the securities that are not suitable for the Regulation AB framework, this action does not significantly change the status quo and therefore has no effect on efficiency, competition and capital formation.

D. Safe Harbors for Privately-Issued Structured Finance Products

We also note that some of our changes to registered offerings of ABS may make alternate offering mechanisms, such as private placements or exempt offerings more attractive. We are proposing to revise our rules relating to offers and sales made in reliance on Rule 506 of Regulation D and resales made in reliance on Rule 144A to give the investors the right to obtain the same level of disclosure as required in a registered Form S–1 or proposed Form SF–1 offerings. This in turn may make offers and sales pursuant to Section 4(2) of the Securities Act or resales pursuant to so-called Section 4(1-½) more attractive to issuers. We think this will promote efficiency by bringing transparency to formerly opaque private structured finance product market, particular for CDOs and similar products.

E. Combined Effect of Proposals

If sponsors/issuers bear the costs discussed above, this could put private-label RMBS sponsors/issuers at further disadvantage relative to government sponsored enterprises [588] whose RMBS are exempt from SEC registration (e.g., Freddie Mac, Fannie Mae and Ginnie Mae). Increasing the costs of securitization may give a competitive advantage to residential mortgage originators who can securitize through government sponsored enterprises and may increase the cost of non-conforming loans to borrowers. Such GSEs are not required to disclose loan-level information and/or commit to the requirements of SEC registration. If the proposed costs are sufficiently high relative to the resulting benefits of these regulations to investors, originators could receive a better price from selling conforming loans to these agencies as opposed to private conduits, thus increasing the competitive advantage of GSEs. In addition, the better selling price of conforming loans to GSEs could adversely affect originators' incentives to underwrite non-conforming loans, since these cannot be securitized through GSEs. The combined effect might be a reduction in the number of assets available for securitization by non-GSE ABS issuers and could provide GSEs with greater market power at the expense of conforming loan lenders and non-conforming borrowers. We believe that to the extent the consideration of risk and return makes non-GSE more attractive than GSEs, this competitive advantage could be reduced.

In summary, taken together the proposed amendments to our regulations and forms on asset-backed securities are designed to improve investor protection, reduce the likelihood of undue reliance on ratings, and increase transparency to market participants. We believe that the proposals also would improve investors' confidence in asset-backed securities and help recovery in the ABS market with attendant positive effects on efficiency, competition and capital formation.

We request comment on our proposed amendments. We request comment on whether our proposals would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible. We also request comment on whether our proposed changes to Exchange Act Rule 15c2–8(b), the disclosure requirements and Exchange Act forms would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

XIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[589] a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether our proposed amendments would be a "major rule" for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

XIV. Regulatory Flexibility Act Certification

The Commission hereby certifies pursuant to 5 U.S.C. 605(b) that the proposals contained in this release, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposals relate to the registration, disclosure and reporting requirements for asset-backed securities under the Securities Act and the Exchange Act. Securities Act Rule 157 [590] and Exchange Act Rule 0–10(a) [591] 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. As the depositor and issuing entity are most often limited purpose entities in an ABS transaction, we focused on the sponsor in analyzing the potential impact of the proposals under the Regulatory Flexibility Act. Based on our data, we only found one sponsor that could meet the definition of a small broker-dealer for purposes of the Regulatory Flexibility Act.[592] Accordingly, the Commission does not believe that the proposals, if adopted, would have a significant economic impact on a substantial number of small entities.

XV. Statutory Authority and Text of Proposed Rule and Form Amendments

We are proposing the new rules, forms and amendments contained in this document under the authority set forth in Sections 4, 5, 6, 7, 8, 10, 17(a), 19(a), and 28 of the Securities Act, Sections 10, 12, 13, 14, 15, 23(a), 35A and 36 of the Exchange Act, and Section 319 [593] of the Trust Indenture Act.[594]

List of Subjects in 17 CFR Parts 200, 229, 230, 232, 239, 240, 243 and 249

Advertising, Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

[588] Ambrose, B. and W., Arthur (2002), "Measuring Potential GSE Funding Advantages," The Journal of Real Estate Finance & Economics, Vol. 25, No. 2; Passmore, W. (2005), "The GSE Implicit Subsidy and the Value of Government Ambiguity," REAL ESTATE ECONOMICS, Vol. 33, No. 3, at 465–486.

[589] Public Law 104–121, Title II, 110 Stat. 857 (1996).

[590] 17 CFR 230.157.

[591] 17 CFR 240.0–10(a).

[592] This is based on data from Asset-Backed Alert.

[593] 15 U.S.C. 77sss.

[594] 15 U.S.C. 77aaa *et. seq.*

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

1. The authority citation for Part 200 Subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77o, 77s, 77sss, 78d, 78d–1, 78d–2, 78w, 78 *ll*(d), 78mm, 80a–37, 80b–11, and 7202, unless otherwise noted.

Sections 200.27 and 200.30–6 are also issued under 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77q, 77u, 78e, 78g, 78h, 78i, 78k, 78m, 78o, 78o–4, 78q, 78q–1, 78t–1, 78u, 77hhh, 77uuu, 80a–41, 80b–5, and 80b–9.

Section 200.30–1 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b) 78*l*, 78m, 78n, 78 *o*(d).

Section 200.30–3 is also issued under 15 U.S.C. 78b, 78d, 78f, 78k–1, 78q, 78s, and 78eee.

Section 200.30–5 is also issued under 15 U.S.C. 77f, 77g, 77h, 77j, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–20, 80a–24, 80a–29, 80b–3, 80b–4.

2. Amend § 200.30–1 by adding paragraph (a)(11) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(a) * * *

(11) To request materials from issuers as required to be furnished to the Commission, upon written request, pursuant to Form D (referenced in § 239.500 of this chapter) and Form 144A–SF (referenced in § 239.144A of this chapter).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 777iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend § 229.512 by:

a. In paragraph (a)(1)(iii)(B) by adding the phrase ", Form SF–3 (§ 239.45 of this chapter)" immediately after the phrase, "Form S–3 (§ 239.13 of this chapter)";

b. In paragraph (a)(1)(iii)(C) by revising the phrase "on Form S–1 (§ 239.11 of this chapter) or Form S–3 (§ 239.13 of this chapter)" to read "Form SF–1 (§ 239.44 of this chapter) or Form SF–3 (§ 239.45 of this chapter)";

c. Adding paragraphs (a)(5)(iii) and (a)(7); and

d. Removing paragraph (l).

The additions read as follows:

§ 229.512 (Item 512) Undertakings.

(a) * * *

(5) * * *

(iii) If the registrant is relying on Rule 430D (§ 230.430D of this chapter):

(A) Each prospectus filed by the registrant pursuant to Rule 424(b)(3) and Rule 424(h) (§ 230.424(b)(3) and § 230.424(h) of this chapter) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(B) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) (§ 230.424(b)(2), (b)(5), or (b)(7) of this chapter) as part of a registration statement in reliance on Rule 430D relating to an offering made pursuant to Rule 415(a)(1) (vii) (§ 230.415(a)(1) (vii) of this chapter) for the purpose of providing the information required by section 10(a) of the Securities Act of 1933 shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430D, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof. *Provided, however,* that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

* * * * *

(7) If the offering is registered on Form SF–3 (§ 239.45) and the registrant is relying on Rule 430D (§ 230.430D of this chapter):

(i) With respect to any offering of securities to file substantially all the information previously omitted from the prospectus filed as part of an effective registration statement in reliance on Rule 430D (§ 230.430D) except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price in accordance with Rule 424(h) (§ 230.424(h)); and

(ii) To file reports for each offering that is registered on Form SF–3 as would be required by Section 15(d) of the Exchange Act and the rules thereunder if the issuer were required to report under that section as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions and provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder.

* * * * *

5. Amend § 229.601 by:

a. Revising the exhibit table in paragraph (a);

b. Adding paragraph (b)(36); and

c. Adding paragraphs (b)(102) through (b)(106).

The revision and additions read as follows:

§ 229.601 Item 601. Exhibits.

(a) * * *

EXHIBIT TABLE

* * * * *

EXHIBIT TABLE

	Securities Act Forms								Exchange Act Forms						
	S–1	*S–3*	*SF–1*	*SF–3*	*S–4*[1]	*S–8*	*S–11*	*F–1*	*F–3*	*F–4*[1]	*10*	*8–K*[2]	*10–D*	*10–Q*	*10–K*
(1) Underwriting agreement	X	X	X	X	X	—	X	X	X	X	—	X	—	—	—

EXHIBIT TABLE—Continued

	Securities Act Forms								Exchange Act Forms						
	S–1	*S–3*	*SF–1*	*SF–3*	*S–4*[1]	*S–8*	*S–11*	*F–1*	*F–3*	*F–4*[1]	*10*	*8–K*[2]	*10–D*	*10–Q*	*10–K*
(2) Plan of acquisition, reorganization, arrangement, liquidation or succession	X	X	X	X	X	—	X	X	X	X	X	X	—	X	X
(3) (i) Articles of incorporation	X	—	X	X	X	—	X	X	—	X	X	X	X	X	X
(ii) Bylaws	X	—	X	X	X	—	X	X	—	X	X	X	X	X	X
(4) Instruments defining the rights of security holders, including indentures	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(5) Opinion re legality	X	X	X	X	X	X	X	X	X	X	—	—	—	—	—
(6) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(7) Correspondence from an independent accountant regarding non-reliance on a previously issued audit report or completed interim review	—	—	—	—	—	—	—	—	—	—	—	X	—	—	—
(8) Opinion re tax matters	X	X	X	X	X	—	X	X	X	X	—	—	—	—	—
(9) Voting trust agreement	X	—	—	—	X	—	X	X	—	X	X	—	—	—	X
(10) Material contracts	X	—	X	X	X	—	X	X	—	X	X	—	X	X	X
(11) Statement re computation of per share earnings	X	—	—	—	X	—	X	X	—	X	X	—	—	X	X
(12) Statements re computation of ratios	X	X	—	—	X	—	X	X	—	X	X	—	—	—	X
(13) Annual report to security holders, Form 10–Q or quarterly report to security holders[3]	—	—	—	—	X	—	—	—	—	—	—	—	—	—	X
(14) Code of Ethics	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	X	—	.....	X
(15) Letter re unaudited interim financial information	X	X	—	—	X	X	X	X	X	X	—	—	—	X	—
(16) Letter re change in certifying accountant[4]	X	—	—	—	X	—	X	—	—	—	X	X	—	—	X
(17) Correspondence on departure of director	—	—	—	—	—	—	—	—	—	—	—	X	—	—	—
(18) Letter re change in accounting principles	—	—	—	—	—	—	—	—	—	—	—	—	—	X	X
(19) Report furnished to security holders	—	—	—	—	—	—	—	—	—	—	—	—	—	X	—
(20) Other documents or statements to security holders	—	—	—	—	—	—	—	—	—	—	—	X	—	—	—
(21) Subsidiaries of the registrant	X	—	X	X	X	—	X	X	—	X	X	—	—	—	X
(22) Published report regarding matters submitted to vote of security holders	—	—	—	—	—	—	—	—	—	—	—	—	X	X	X
(23) Consents of experts and counsel	X	X	X	X	X	X	X	X	X	X	—	[5]X	[5]X	[5]X	[5]X
(24) Power of attorney	X	X	X	X	X	X	X	X	X	X	X	X	—	X	X
(25) Statement of eligibility of trustee	X	X	X	X	X	—	—	X	X	X	—	—	—	—	—
(26) Invitation for competitive bids	X	X	X	X	X	—	—	X	X	X	—	—	—	—	—
(27) through (30) [Reserved]	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
(31) (i) Rule 13a–14(a)/15d–14(a)	—	—	—	—	—	—	—	—	—	—	—	—	—	X	X
Certifications (ii) Rule 13a–14/15d–14 Certifications	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	—	X
(32) Section 1350 Certifications[6]	—	—	—	—	—	—	—	—	—	—	—	—	—	X	X
(33) Report on assessment of compliance with servicing criteria for asset-backed issuers	—	—	—	—	—	—	—	—	—	—	—	—	—	—	X
(34) Attestation report on assessment of compliance with servicing criteria for asset-backed securities	—	—	—	—	—	—	—	—	—	—	—	—	—	—	X
(35) Servicer compliance statement	—	—	—	—	—	—	—	—	—	—	—	—	—	—	X
(36) Depositor Certification for shelf offerings of asset-backed securities	—	—	—	X	—	—	—	—	—	—	—	—	—	—	—
(36) through (98) [Reserved]	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
(99) Additional exhibits	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
(100) XBRL-Related Documents	.....	.....	—	—	.....	.....	.....	.....	.....	.....	X	X	.....	X	X
(101) Interactive Data File	X	X	—	—	X	—	X	X	X	X	—	X	—	X	X
(102) Asset Data File	—	—	X	X	—	—	—	—	—	—	—	X	X	—	—
(103) Asset Related Documents	—	—	X	X	—	—	—	—	—	—	—	X	X	—	—
(104) Waterfall Computer Program	—	—	X	X	—	—	—	—	—	—	—	X	X	—	—
(105) Waterfall Computer Program Related Documents	—	—	X	X	—	—	—	—	—	—	—	X	X	—	—
(106) Static Pool PDF	—	—	X	X	—	—	—	—	—	—	—	X	—	—	—

(b) * * *

(36) *Depositor certification for shelf offerings of asset-backed securities.* For any offering of asset-backed securities (as defined in § 229.1101) made on a delayed basis under § 230.415(a)(1)(vii), provide the certification required by General Instruction I.B.iii. of Form SF–3 (referenced in § 239.45) exactly as set forth below:

Certification

I, [identify the certifying individual,] certify that:

1. To my knowledge, the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus; and

2. I have reviewed the prospectus and the necessary documents for this certification.

Date: _____

_____

[Signature]

_____

[Title]

The certification should be signed by the chief executive officer of the depositor, as required by General Instruction I.B.1(c) of Form SF–3.

* * * * *

(102) *Asset Data File.* An Asset Data File (as defined in § 232.11 of this chapter) pursuant to, with respect to any registration statement on Form SF–1 (§ 239.44) or Form SF–3 (§ 239.45), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10–D, Item 1121(d) and 1121(e) (§ 229.1121(d) and 229.1121(e) of this chapter).

(103) *Asset Related Documents.* (i) If a registrant includes other data points in the Asset Data File filed pursuant to (102) of this subparagraph, in addition to those required by Schedule L of Regulation AB (§ 229.1111A of this chapter), Schedule L–D of Regulation AB (§ 229.1121A of this chapter), or Schedule CC of Regulation AB (§ 229.1111B of this chapter), a document identifying and setting forth the definitions and formulas for each of those additional data points and the related tagged data.

(ii) A document setting forth, in reasonable detail other explanatory disclosure regarding the asset-level data file filed pursuant to (102) of this paragraph,

(104) *Waterfall Computer Program.* A Waterfall Computer Program as defined in Item 1113(h) of Regulation AB (§ 229.1113(h) of this chapter) filed pursuant to, with respect to any registration statement on Form SF–1 (§ 239.44) or Form SF–3 (§ 239.45), Item 1113(h) of Regulation AB (§ 229.1113(h) of this chapter).

(105) *Waterfall Computer Program Related Documents.* If a registrant includes additional program functionality in the Waterfall Computer Program filed pursuant to (104) of this subparagraph, in addition to that required by Item 1113(h) of Regulation AB (§ 229.1113(h) of this chapter), a document identifying and setting forth in reasonable detail the additional program functionality.

(106) *Static Pool.* If not included in the prospectus, static pool disclosure as required by Item 1105 of Regulation AB (§ 229.1105 of this chapter).

* * * * *

6. Amend § 229.1100 by revising paragraph (f) and adding paragraph (g) to read as follows:

§ 229.1100 (Item 1100) General.

* * * * *

(f) *Filing of required exhibits.* Where agreements or other documents in this Regulation AB are specified to be filed as exhibits to a Securities Act registration statement, such final agreements or other documents, if applicable, may be incorporated by reference as an exhibit to the registration statement, such as by filing a Form 8–K in the case of offerings registered on Form SF–3 (§ 239.45 of this chapter). They must, however, be filed and made part of the registration statement at the latest by the date the final prospectus is required to be filed under Securities Act Rule 424 (§ 230.424 of this chapter).

(g) *Presentation of flow of funds on the transaction.* Provide information on the flow of funds in the transaction, as required in Item 1113 of Regulation AB, including any related definitions of terms, in one location in the prospectus.

7. Amend § 229.1101 by:

a. Revising paragraph (c)(3)(i);

b. Revising the references to "50%" in paragraphs (c)(3)(ii)(A) and (B) to read "10%"; and

c. Revising the phrase "three years" in paragraph (c)(3)(iii) introductory text to read "one year".

The revision reads as follows:

§ 229.1101 (Item 1101) Definitions.

* * * * *

(c) * * *

(3) * * *

(i) *Master trusts.* The offering related to the securities contemplates adding additional assets to the pool that backs such securities in connection with future issuances of asset-backed securities backed by such pool, provided, however, that the securities are backed by receivables or other financial assets that arise under revolving accounts. Such offering also may contemplate additions to the asset pool, to the extent consistent with paragraphs (c)(3)(ii) and (c)(3)(iii) of this section, in connection with maintaining minimum pool balances in accordance with the transaction agreements.

* * * * *

8. Amend § 229.1102 by revising paragraph (a) to read as follows:

§ 229.1102 (Item 1102) Forepart of registration statement and outside cover page of the prospectus.

* * * * *

(a) Identify the sponsor, the depositor and the issuing entity (if known). Such identifying information should include a Central Index Key number for the depositor and the issuing entity, and if applicable, the sponsor.

* * * * *

9. Amend § 229.1103 by adding an instruction after paragraph (a)(2) to read as follows:

§ 229.1103 (Item 1103) Transaction summary and risk factors.

* * * * *

(a) * * *

(2) * * *

Instruction to Item 1103(a)(2). What is required is summary disclosure tailored to the particular asset pool backing the asset-backed securities. While the material characteristics will vary depending on the nature of the pool assets, summary disclosure may include, among other things, statistical information of: The types of underwriting or origination programs, exceptions to underwriting or origination criteria and, if applicable, modifications made to the pool assets after origination.

* * * * *

10. Amend § 229.1104 by adding new paragraphs (e) and (f) to read as follows:

§ 229.1104 (Item 1104) Sponsors.

* * * * *

(e) Describe any interest that the sponsor has retained in the transaction, including amount and nature of that interest. If the offering is registered on Form SF–1 (§ 239.44), provide disclosure (if applicable) that the sponsor is not required by law to retain any interest in the securities and may sell any interest initially retained at any time.

(f) If the sponsor is required to repurchase or replace any asset for

breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets originated or sold by the sponsor that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements. Provide the percentage of that amount that were not then repurchased or replaced by the sponsor. Of those assets that were not then repurchased or replaced, disclose whether an opinion of a third party not affiliated with the sponsor had been furnished to the trustee that confirms that the assets did not violate a representation or warranty.

(2) The sponsor's financial condition to the extent that there is a material risk that the financial condition could have a material impact on its ability to comply with the provisions relating to the repurchase obligations for those assets or otherwise materially impact the pool.

11. Amend § 229.1105 by:

a. Adding introductory text;

b. Revising paragraph (a)(3)(ii);

c. Adding an instruction to paragraph (a)(3)(ii);

d. Adding new paragraph (a)(3)(iv); and

e. Revising paragraph (c).

The revisions and additions read as follows:

§ 229.1105 (Item 1105) Static pool information.

Describe the static pool information presented. Provide appropriate introductory and explanatory information to introduce the characteristics, the methodology used in determining or calculating the characteristics and any terms or abbreviations used. Include a description of how the static pool differs from the pool underlying the securities being offered. In addition to a narrative description, the static pool information should be presented graphically if doing so would aid in understanding.

(a) * * *

(3) * * *

(ii) Present delinquency, cumulative loss and prepayment data for each prior securitized pool or vintage origination year, as applicable, over the life of the prior securitized pool or vintage origination year. The most recent periodic increment for the data must be as of a date no later than 135 days after the date of first use of the prospectus.

Instruction to Item 1105(a)(3)(ii). Refer to Item 1100(b) of this Regulation AB for presentation of historical delinquency and loss information.

* * * * *

(iv) Provide graphical illustration of delinquencies, prepayments and losses for each prior securitized pool or by vintage origination year regarding originations or purchases by the sponsor, as applicable for that asset type.

* * * * *

(c) If the information that would otherwise be required by paragraph (a)(1), (a)(2) or (b) of this section is not material, but alternative static pool information would provide material disclosure, provide such alternative information instead. Similarly, information contemplated by paragraph (a)(1), (a)(2) or (b) of this section regarding a party or parties other than the sponsor may be provided in addition to or in lieu of such information regarding the sponsor if appropriate to provide material disclosure. In addition, provide other explanatory disclosure, including why alternative disclosure is being provided and explain the absence of any static pool information contemplated by paragraphs (a)(1), (a)(2) or (b) of this section, as applicable.

* * * * *

12. Amend § 229.1106 by adding paragraph (d) to read as follows:

§ 229.1106 (Item 1106) Depositors.

* * * * *

(d) Any failure in the last year of an issuing entity established by the depositor or any affiliate of the depositor to file or file in a timely manner an Exchange Act report that was required either by rule or by virtue an undertaking pursuant to Item 512 of Regulation S–K (17 CFR 229.512).

13. Amend § 229.1108 by:

a. Revising in paragraph (a)(3) the phrase "(c) and (d)" to read "(c), (d), and (e)";

b. Removing paragraph (c)(6);

c. Redesignating paragraphs (c)(7) and (c)(8) as paragraphs (c)(6) and (c)(7); and

d. Adding paragraph (e).

New paragraph (e) reads as follows:

§ 229.1108 (Item 1108) Servicers.

* * * * *

(e) Describe any interest that the servicer has retained in the transaction, including amount and nature of that interest.

14. Amend § 229.1110 by:

a. Revising paragraph (a);

b. Adding paragraph (b)(3); and

c. Adding paragraph (c).

The revision and additions read as follows:

§ 229.1110 (Item 1110) Originators.

(a) Identify any originator or group of affiliated originators, apart from the sponsor or its affiliates, provided, however, identification of an originator is not required if such originator has originated, or is expected to originate, less than 10% of the pool assets and the cumulative amount of originated assets by parties other than the sponsor (or its affiliates) comprises less than 10% of the total pool assets.

(b) * * *

(3) Describe any interest that the originator has retained in the transaction, including amount and nature of that interest.

(c) For any originator identified under paragraph (b) of this section, if such originator is required to repurchase or replace a pool asset for breach of a representation and warranty pursuant to the transaction agreements, provide the following information:

(1) On a pool by pool basis, the amount, if material, of the publicly securitized assets originated or sold by the originator that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the prior three years pursuant to the transaction agreements. Provide the percentage of that amount that were not then repurchased or replaced by the originator. Of those assets that were not then repurchased or replaced, disclose whether an opinion of a third party not affiliated with the originator had been furnished to the trustee that confirms that the assets did not violate the representations and warranties.

(2) The originator's financial condition to the extent that there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with the provisions relating to the repurchase obligations for those assets.

15. Amend § 229.1111 by:

a. Revising paragraph (a)(3);

b. Redesignating paragraphs (a)(5) and (a)(6) and Instruction to Item 1111(a)(6) as paragraphs (a)(6) and (a)(7) and Instruction to Item 1111(a)(7);

c. Adding new paragraph (a)(5);

d. Revising paragraph (e); and

e. Adding paragraphs (h) and (i).

The additions and revisions read as follows:

§ 229.1111 (Item 1111) Pool assets.

* * * * *

(a) * * *

(3) A description of the solicitation, credit-granting or underwriting criteria used to originate or purchase the pool

assets, including any changes in such criteria and the extent to which such policies and criteria are or could be overridden. Disclosure on the underwriting of assets that deviate from the disclosed criteria must be accompanied by data on the amount and characteristics of those assets that did not meet the disclosed standards. If disclosure is provided regarding compensating or other factors, if any, that were used to determine that those assets should be included in the pool, despite not having met the disclosed underwriting standards, describe those factors and provide data on the amount of assets in the pool that are represented as meeting those factors and the amount of assets that do not meet those factors.

* * * * *

(5) The steps undertaken by the originator to verify the information used in the solicitation, credit-granting or underwriting of the pool assets.

* * * * *

(e) *Representations and warranties and modification provisions relating to the pool assets.* Provide the following information:

(1) *Representations and warranties.* (i) Summarize any representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, and describe briefly the remedies available if those representations and warranties are breached, such as repurchase obligations.

(ii) Describe any representation and warranty relating to fraud in the origination of the assets. If none, so state.

(2) *Modification provisions.* Describe any provisions in the transaction agreements governing the modification of the terms of any asset, including how modification may affect cash flows from the assets or to the securities.

* * * * *

(h) *Asset-level information.* Provide asset-level information for each asset in the pool in a manner specified in Schedule L (§ 229.1111A). This paragraph (h) does not apply to issuers of asset-backed securities backed primarily by receivables due on credit cards, charge cards or stranded costs. State in the prospectus that the information provided in response to this subparagraph and Schedule L is provided as a machine-readable data file filed with the Securities and Exchange Commission on its Web site at *www.sec.gov.* Identify the CIK and file number.

(1) If the information is part of a prospectus filed with a registration statement on Form SF–1 (§ 239.44) or in accordance with Rule 424(h) (§ 230.424(h)), provide the information as of a measurement date, unless otherwise specified. For purposes of this subparagraph, the measurement date is a date designated by the registrant that is as recent as practicable.

(2) If the information is part of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§ 230.424(b)), provide the information as of the cut-off date as specified in the instruments governing the transaction (i.e., the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders).

(3) If the information is part of a report filed on Form 8–K (referenced in § 249.308) in accordance with Item 6.05, provide the information as of the cut-off date as specified in the instruments governing the transaction, unless otherwise specified.

(i) *Credit card pool information.* If the asset-backed securities are backed primarily by receivables due on credit cards or charge cards, provide the information for the underlying pool in a manner specified in Schedule CC (§ 229.1111B). State in the prospectus that the information provided in response to this subparagraph and Schedule CC is provided as a machine-readable data file filed with the Securities and Exchange Commission on its website at *www.sec.gov.* Identify the CIK of the issuer and file number.

(1) If the information is part of a prospectus filed in accordance with Rule 424(h) (§ 230.424(h)), or if the information is part of a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§ 230.424(b)), provide the information as of a measurement date. Identify the measurement date in the prospectus. For purposes of this paragraph, the measurement date is a date designated by the registrant that is as recent as practicable.

(2) If the information is part of a report filed on Form 8–K (referenced in § 249.308) in accordance with Item 6.05, provide the information as of a measurement date.

16. Add § 229.1111A to read as follows:

§ 229.1111A (Item 1111A) Asset-level information.

Schedule L

NOTE A. Submit the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. See Rule 301 of Regulation S–T (§ 232.301 of this chapter).

Instruction. The following definitions apply to the terms used in this schedule unless otherwise specified:

MI. Mortgage insurance.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

Item 1. General. Provide the following data for each asset in the asset pool:

(a) *Information related to the asset.* (1) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

Instruction to Item 1(a)(1). Asset number types that will satisfy the requirements of this subparagraph may be generated by organizations such as CUSIP Global Services (CUSIP), the American Securitization Forum (ASF Universal Link) or MERS (Mortgage Identification Number); by the registrant; or by using the convention "[CIK number]—[Sequential asset number]".

(2) *Asset number.* Provide the unique ID number of the asset.

Instruction to Item 1(a)(2). The asset number should be the same number that will be used to identify the asset for all reports that would be required of an issuer under Sections 13(a) or 15(d) of the Exchange Act.

(3) *Asset group number.* For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(4) *Originator.* Identify the name or MERS organization number of the originator entity. If the asset is a security, identify the name of the issuer.

(5) *Origination date.* Provide the date of asset origination. For revolving asset master trusts, provide the origination date of the receivable that will be added to the asset pool.

(6) *Original asset amount.* Indicate the dollar amount of the asset at the time of origination.

(7) *Original asset term.* Indicate the initial number of months between asset origination and the asset maturity date.

(8) *Asset maturity date.* Indicate the month and year in which the final payment on the asset is scheduled to be made.

(9) *Original amortization term.* Indicate the number of months in which the asset would be retired if the amortizing principal and interest payment were to be paid each month.

(10) *Original interest rate.* Provide the rate of interest at the time of origination of the asset.

(11) *Interest type.* Indicate whether the interest rate calculation method is simple or actuarial.

(12) *Amortization type.* Indicate whether the interest rate on the asset is fixed or adjustable.

(13) *Original interest only term.* Indicate the number of months in which the obligor is permitted to pay only interest on the asset.

(14) *First payment date.* Provide the date of the first scheduled payment.

(15) *Primary servicer.* Identify the name or MERS organization number of the entity that services or will have the right to service the asset.

(16) *Servicing fee—percentage.* If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the Original Contract Amount.

(17) *Servicing fee—flat-dollar.* If the servicing fee is based on a flat-dollar amount, indicate the monthly servicing fee paid to all servicers as a dollar amount.

(18) *Servicing advance methodology.* Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.

(19) *Defined underwriting indicator.* Indicate yes or no whether the loan or asset was made as an exception to a defined and/or standardized set of underwriting criteria.

(20) *Measurement date.* The date the loan or asset-level data is provided in accordance with Item 1111(h)(1) of Regulation AB (§ 229.1111(h)(1)).

(b) *Updated information as of the cut-off date.* (1) *Cut-off date.* Indicate the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders.

(2) *Current asset balance.* Indicate the outstanding principal balance of the asset as of the cut-off date.

(3) *Current interest rate.* Indicate the interest rate in effect on the asset as of the cut-off date.

(4) *Current payment amount due.* Indicate the next total payment due to be collected.

(5) *Current delinquency status.* Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(6) *Number of days payment is past due.* If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the cut-off date.

(7) *Current payment status.* Indicate the number of payments the obligor is past due as of the cut-off date. A payment is considered past due if it has not been received by the end of the day immediately preceding the next due date.

(8) *Remaining term to maturity.* Indicate the number of months between the cut-off date and the asset maturity date.

Item 2. Residential mortgages. If the asset pool contains residential mortgages, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Loan purpose.* Specify the code which describes the purpose of the loan.

(2) *Lien position.* Indicate the code that describes the lien position for the loan.

(3) *Prepayment penalty indicator.* Indicate yes or no as to whether the obligor is subject to prepayment penalties.

(4) *Negative amortization indicator.* Indicate yes or no as to whether the loan allows negative amortization.

(5) *Mortgage modification indicator.* Indicate yes or no as to whether the loan has been modified.

(6) *Mortgage insurance requirement indicator.* Indicate yes or no as to whether the mortgage insurance is or was required as a condition for originating the loan.

(7) *Balloon indicator.* Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.

(8) *Cash out amount.* Provide the amount of cash the obligor will receive at the closing of the loan on a refinance transaction.

(9) *Broker.* Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.

(10) *Channel.* Specify the code that describes the source from which the Issuer obtained the loan.

(11) *NMLS loan originator number.* Specify the National Mortgage License System registration number of the loan originator.

(12) *NMLS loan origination company number.* Specify the National Mortgage License System registration number of the company that originated the loan.

(13) *Buy down period.* Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.

(14) *Interest paid through date.* Provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.

(15) *Loan delinquency advance days count.* Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.

(16) *Junior mortgage balance.* For first mortgages with subordinate liens at the time of origination, provide the amount of the combined balance of the subordinate liens.

(17) *Information related to junior liens.* If the loan is not a first mortgage, provide the following additional information for each non-first mortgage:

(i) *Senior loan amount(s).* For non-first mortgages, provide the total amount of the balances of all associated senior mortgages at the time of origination of the subordinate lien.

(ii) *Loan type of most senior lien.* For non-first mortgages, indicate the code that describes the loan type of the first mortgage.

(iii) *Hybrid period of most senior lien.* For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.

(iv) *Negative amortization limit of most senior lien.* For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.

(v) *Origination date of most senior lien.* For non-first mortgages, provide the origination date of the associated first mortgage.

(18) *Information related to ARMs.* If the loan is an ARM, provide the following additional information for each loan:

(i) *ARM index.* Specify the code that describes the index on which an adjustable interest rate is based.

(ii) *ARM margin.* Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.

(iii) *Fully indexed interest rate.* Indicate the fully indexed interest rate.

(iv) *Initial fixed rate period for hybrid ARM.* If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the mortgage and the first interest rate adjustment date.

(v) *Initial interest rate decrease.* Indicate the maximum percentage by which the mortgage note rate may decrease at the first interest rate adjustment date.

(vi) *Initial interest rate increase.* Indicate the maximum percentage by which the mortgage note rate may increase at the first interest rate adjustment date.

(vii) *Index lookback.* Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.

(viii) *Subsequent interest rate reset period.* Indicate the number of months between subsequent rate adjustments.

(ix) *Lifetime rate ceiling.* Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(x) *Lifetime rate floor.* Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(xi) *Next adjustment date.* Provide the next scheduled date on which the mortgage note rate adjusts.

(xii) *Subsequent interest rate decrease.* Provide the maximum percentage by which the interest rate may decrease at each rate adjustment date after the initial adjustment.

(xiii) *Subsequent interest rate increase.* Provide the maximum percentage by which the interest rate may increase at each rate adjustment date after the initial adjustment.

(xiv) *Subsequent payment reset period.* Indicate the number of months between payment adjustments after the first interest rate adjustment date.

(xv) *ARM round indicator.* Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.

(xvi) *ARM round percentage.* Indicate the percentage to which an adjusted interest rate is to be rounded.

(xvii) *Option ARM indicator.* Indicate yes or no as to whether the loan is an Option ARM.

(xviii) *Payment method after recast.* Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.

(xix) *Initial minimum payment.* Provide the amount of the initial minimum payment the obligor is permitted to make.

(xx) *Convertible indicator.* Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.

(xxi) *HELOC indicator.* Indicate yes or no as to whether the loan is a Home Equity Line of Credit (HELOC).

(xxii) *HELOC draw period.* Indicate the original maximum number of months during which the obligor may draw funds against the HELOC account.

(19) *Information related to prepayment penalties.* If the obligor is subject to prepayment penalties, provide the following additional information for each loan:

(i) *Prepayment penalty calculation.* Specify the code that describes the method for calculating the prepayment penalty for the loan.

(ii) *Prepayment penalty type.* Specify the code that describes the type of prepayment penalty.

(iii) *Prepayment penalty total term.* Provide the total number of months that the prepayment penalty may be in effect.

(20) *Information related to negative amortization.* If the loan allows for negative amortization, provide the following additional information for each loan:

(i) *Negative amortization limit.* Specify the maximum dollar amount of negative amortization that is allowed before it is required to recalculate the fully amortizing payment based on the new loan balance.

(ii) *Initial negative amortization recast period.* Indicate the number of months in which negative amortization is allowed.

(iii) *Subsequent negative amortization recast period.* Indicate the number of months after which the payment is required to recast after the first recast period.

(iv) *Current negative amortization balance amount.* Provide the amount of the current negative amortization balance accumulated.

(v) *Initial fixed payment period.* Indicate the number of months after the origination of the loan during which the payment is fixed.

(vi) *Initial periodic payment cap.* Indicate the maximum percentage by which a payment can change (increase or decrease) in the first period.

(vii) *Subsequent periodic payment cap.* Indicate the maximum percentage by which a payment can change (increase or decrease) in one period after the initial cap.

(viii) *Initial minimum payment reset period.* Provide the maximum number of months an obligor can initially pay the minimum payment before a new minimum payment is determined.

(ix) *Subsequent minimum payment reset period.* Provide the maximum number of months an obligor can pay the minimum payment before a new minimum payment is determined after the initial period.

(x) *Current minimum payment.* Provide the amount of current minimum payment.

(21) *Information related to modifications.* If the loan has been modified, provide information related to the most recent modification.

(i) *Number of modifications.* Provide the number of times that the loan has been modified.

(ii) *Loan modification event type.* Specify the code that describes the type of action that has modified the loan terms.

(iii) *Loan modification effective date.* Provide the date on which the modification of the loan has gone into effect.

(iv) *Updated DTI (front-end).* Provide the updated front-end DTI ratio, calculated by dividing the total monthly housing expense by total monthly income.

(v) *Updated DTI (back-end).* Provide the updated back-end DTI ratio, calculated by dividing the total monthly debt expense by the total monthly income.

(vi) *Modification effective payment date.* Indicate the date of the first payment due after the loan modification.

(vii) *Total capitalized amount.* Provide the amount added to the principal balance of a loan due to the modification.

(viii) *Total deferred amount.* Provide the deferred amount that is non-interest bearing.

(ix) *Pre-modification interest rate.* Provide the most recent scheduled interest rate preceding the Modification Effective Payment Date.

(x) *Pre-modification principal and interest payment.* Provide the most recent scheduled total principal and interest payment amount preceding the Modification Effective Payment Date.

(xi) *Forgiven principal amount.* Provide the total amount of all principal balance reductions as a result of loan modification over the life of the loan.

(xii) *Forgiven interest amount.* Provide the total amount of all interest forgiven as a result of loan modification over the life of the loan.

(b) *Information related to the property.*

(1) *Geographic location.* Specify the location of the property by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

(2) *Occupancy status.* Specify the code that describes the property occupancy status.

(3) *Sales price.* Provide the negotiated price of a given property between the buyer and seller.

(4) *Property type.* Specify the code that describes the type of property that secures the loan.

(5) *Original appraised property value.* Provide the appraised value amount of the property used to approve the loan.

(6) *Original property valuation type.* Specify the code that describes the method by which the property value was reported at the time of underwriting.

(7) *Original property valuation date.* Specify the date on which the original property value was reported.

(8) *Original automated valuation model (AVM) model name.* Provide the code that indicates the name of the AVM model if an AVM was used to determine the original property valuation.

(9) *Original AVM confidence score.* Provide the confidence score presented on the AVM report of the original property value.

(10) *Most recent property value.* If an additional property valuation was obtained after the Original Appraised Property Value, provide the most recent property value.

(11) *Most recent property valuation type.* Specify the code that describes the method by which the Most Recent Property Value was reported.

(12) *Most recent property valuation date.* Specify the date on which the Most recent property value was reported.

(13) *Most recent AVM model name.* Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.

(14) *Most recent AVM confidence score.* Provide the confidence score presented on the AVM report of the most recent property value.

(15) *Original combined loan-to-value (CLTV).* Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

(16) *Original loan-to-value (LTV).* Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

(17) *LTV calculation date.* Provide the date on which the LTV was calculated.

(18) *Original pledged assets.* If the obligor pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.

(19) *Information related to manufactured homes.* If loans in the pool are collateralized by manufactured homes, provide the following additional information:

(i) *Real estate interest.* Indicate the code that describes the real estate interest of the property on which the manufactured home is situated.

(ii) *Community ownership structure.* If the manufactured home is situated in a community, specify the code that describes the ownership of the community.

(iii) *Year of manufacture.* Indicate the year in which the home was manufactured.

(iv) *HUD code compliance indicator.* Indicate yes or no as to whether the home was constructed in accordance with the 1976 HUD code.

(v) *Gross manufacturer's invoice price.* Provide the total amount that appears on the manufacturer's invoice of the home.

(vi) *LTI (loan-to-invoice) gross.* Provide the ratio of the loan amount divided by the gross manufacturer's invoice price.

(vii) *Net manufacturer's invoice price.* Provide the amount of the gross manufacturer's invoice price minus intangible costs, including: Transportation, association, on-site setup, service, and warranty costs, taxes, dealer incentives, and other fees.

(viii) *LTI (Net).* Provide the ratio of the loan amount divided by the net manufacturer's invoice price.

(ix) *Manufacturer name.* Provide the name of the manufacturer of the subject property.

(x) *Model name.* Provide the model name of the subject property.

(xi) *Down payment source.* Indicate the code that describes the source of the down payment.

(xii) *Community/related party lender indicator.* Indicate the code describing whether the loan was made by the community owner, an affiliate of the community owner or the owner of the real estate upon which the collateral is located.

(xiii) *Chattel indicator.* Specify the code indicating whether the secured property is classified as chattel or real estate.

(c) *Information related to the obligor.*

(1) *Obligor credit score type.* Specify the type of the standardized credit score used to evaluate the obligor.

(2) *Obligor credit score.* Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 2(c)(3).

(3) *Obligor FICO score.* If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.

(4) *Co-obligor credit score type.* Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) *Co-obligor credit score.* Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 2(c)(6).

(6) *Co-obligor FICO score.* Provide the standardized FICO credit score of the co-obligor.

(7) *Obligor income verification level.* Indicate the code describing the extent to which the obligor's income has been verified.

(8) *Co-obligor income verification.* Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) *Obligor employment verification.* Indicate the code describing the extent to which the obligor's employment has been verified.

(10) *Co-obligor employment verification.* Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) *Obligor asset verification.* Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) *Co-obligor asset verification.* Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) *Liquid/cash reserves.* Provide the dollar amount of remaining verified liquid assets after the close of the mortgage.

(14) *Number of mortgaged properties.* Provide the number of properties owned by the obligor that currently secure mortgage loans.

(15) *Monthly debt.* Provide the dollar amount of the aggregate monthly payment due on other debt of the obligor.

(16) *Originator DTI.* Provide the total debt to income ratio used by the originator to qualify the loan.

(17) *Qualification method.* Specify the code that describes type of mortgage payment used to qualify the obligor for the loan.

(18) *Percentage of down payment from obligor own Funds.* Provide the percentage of down payment from obligor own funds other than any gift or borrowed funds.

(19) *Number of obligors.* Indicate the number of obligors who are obligated to repay the mortgage note.

(20) *Self-employment flag.* Indicate whether the obligor is self-employed.

(21) *Current other monthly payment.* Provide the total amount per month of all payments pertaining to the subject property other than principal and interest.

(22) *Length of employment: Obligor.* Provide the number of complete months of service with the obligor's current employer as of the origination date.

(23) *Length of employment: Co-obligor.* Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(24) *Months bankruptcy.* Provide the number of months since any obligor was discharged from bankruptcy.

(25) *Months foreclosure.* If the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, provide the number of months since the foreclosure date.

(26) *Obligor wage income.* Provide the dollar amount per month of income associated with the obligor's employment.

(27) *Co-obligor wage income.* Provide the dollar amount per month of income associated with the co-obligor's employment.

(28) *Obligor other income.* Provide the dollar amount of the obligor's monthly income other than Obligor Wage Income.

(29) *Co-obligor other income.* Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(30) *All obligor wage income.* Provide the monthly income of all obligors derived from employment.

(31) *All obligor total income.* Provide the monthly income of all obligors.

(d) *Information related to mortgage insurance.* If mortgage insurance is required on the mortgage, provide the following additional information:

(1) *Mortgage insurance company name.* Provide the name of the entity providing mortgage insurance for the loan.

(2) *Mortgage insurance coverage.* Indicate the percentage of mortgage insurance coverage obtained.

(3) *Mortgage insurance obtainer.* Specify the code that describes the party that paid for the mortgage insurance: The obligor, the lender, or others.

(4) *Pool insurance company.* Provide the name of the pool insurance provider.

(5) *Pool insurance stop loss percent.* Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.

(6) *Mortgage insurance certificate number.* Provide the number assigned to the individual loan by the mortgage insurance company.

(7) *Mortgage insurance coverage plan type.* Specify the code that describes coverage category of mortgage insurance applicable to the loan.

Item 3. Commercial mortgages. If the asset pool contains commercial mortgages, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Lien position.* Indicate the code that describes the lien position for the loan.

(2) *Loan structure.* Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to loan within securitization.

(3) *Current remaining term.* Provide the number of months until the earlier of the scheduled loan maturity or the current hyperamortizing date.

(4) *Payment type.* Indicate the code that describes the type or method of payment for a loan.

(5) *Periodic principal and interest payment.* Provide the total amount of principal and interest due on the loan in effect as of the closing date of the transaction.

(6) *Payment frequency.* Indicate the code that describes the frequency mortgage loan payments are required to be made.

(7) *Number of properties.* Provide the current number of properties which serve as mortgage collateral for the loan.

(8) *Grace days allowed.* Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.

(9) *Current hyper-amortizing date.* Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.

(10) *Interest only indicator.* Indicate yes or no as to whether or not this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.

(11) *Balloon indicator.* Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.

(12) *Prepayment penalty indicator.* Indicate yes or no as to whether the obligor is subject to prepayment penalties.

(13) *Negative amortization indicator.* Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.

(14) *Mortgage modification indicator.* Indicate yes or no whether the loan has been modified.

(15) *Information related to ARMs.* If the loan is an ARM, provide the following additional information for each loan:

(i) *ARM index.* Specify the code that describes the index on which an adjustable interest rate is based.

(ii) *First rate adjustment date.* Provide the date on which the first interest rate adjustment becomes effective.

(iii) *First payment adjustment date.* Provide the date on which the first adjustment to the regular payment amount becomes effective (after the contribution/cut-off date).

(iv) *ARM margin.* Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.

(v) *Lifetime rate ceiling.* Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.

(vi) *Lifetime rate floor.* Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.

(vii) *Periodic rate increase.* Provide the maximum percentage the interest rate can increase from any period to the next.

(viii) *Periodic rate decrease.* Provide the maximum percentage the interest rate can decrease from any period to the next.

(ix) *Periodic pay adjustment.* Provide the maximum dollar amount the principal and interest constant can increase or decrease on any adjustment date.

(x) *Periodic pay adjustment.* Provide the maximum percentage amount the principal and interest constant can increase or decrease from any period to the next.

(xi) *Rate reset frequency.* Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.

(xii) *Pay reset frequency.* Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.

(xiii) *Index look back.* Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.

(16) *Information related to prepayment penalties.* If the obligor is subject to

prepayment penalties, provide the following additional information for each loan:

(i) *Prepayment lock-out end date.* Provide the effective date after which the lender allows prepayment of a loan.

(ii) *Yield maintenance end date.* Provide the date after which yield maintenance prepayment penalties are no longer effective.

(iii) *Prepayment premium end date.* Provide the effective date after which prepayment premiums are no longer effective.

(17) *Information related to negative amortization.* If the loan allows for negative amortization, provide the following additional information for each loan:

(i) *Maximum negative amortization allowed (% of original balance).* Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(ii) *Maximum negative amortization allowed ($).* Provide the maximum dollar amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.

(b) *Information related to the property.* Provide the following information for *each* of the properties that collateralizes a loan identified above.

(1) *Property name.* Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."

(2) *Geographic location.* Specify the location of the property by providing the zip code.

(3) *Property type.* Indicate the code that describes how the property is being used.

(4) *Net rentable square feet.* Provide the net rentable square feet area of a property.

(5) *Number of units/beds/rooms.* Provide the number of units/beds/rooms of a property.

(6) *Year built.* Provide the year that the property was built.

(7) *Valuation amount.* The valuation amount of the property as of the valuation date.

(8) *Valuation source.* Specify the code that identifies the source of the most recent property valuation.

(9) *Valuation date.* The date the valuation amount was determined.

(10) *Physical occupancy.* Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.

(11) *Revenue.* Provide the total underwritten revenue amount from all sources for a property.

(12) *Operating expenses.* Provide the total underwritten operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.

(13) *Defeasance option start date.* Provide the date when the defeasance option becomes available.

(14) *Net operating income.* Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.

(15) *Net cash flow.* Provide the total underwritten revenue less the total underwritten operating expenses and capital costs.

(16) *NOI/NCF indicator.* Indicate the code that describes how net operating income and net cash flow were calculated.

(17) *DSCR (NOI).* Provide the ratio of underwritten net operating income to debt service.

(18) *DSCR (NCF).* Provide the ratio of underwritten net cash flow to debt service.

(19) *DSCR indicator.* Indicate the code that describes how DSCR was calculated.

(20) *Largest tenant.* Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).

(21) *Square feet of largest tenant.* Provide total square feet leased by the largest tenant.

(22) *Lease expiration of largest tenant.* Provide the date of lease expiration for the largest tenant.

(23) *Second largest tenant.* Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).

(24) *Square feet of second largest tenant.* Provide total square feet leased by the second largest tenant.

(25) *Lease expiration of second largest tenant.* Provide the date of lease expiration for the second largest tenant.

(26) *Third largest tenant.* Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).

(27) *Square feet of third largest tenant.* Provide total square feet leased by the third largest tenant.

(28) *Lease expiration of third largest tenant.* Provide the date of lease expiration for the third largest tenant.

Item 4. Automobile loans. If the asset pool contains vehicle loans, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Payment type.* Specify the code indicating whether payments are required monthly or if a balloon payment is due.

(2) *Subvented.* Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.

(b) *Information related to the property.*

(1) *Geographic location of dealer.* Provide the zip code of the originating dealer.

(2) *Vehicle manufacturer.* Provide the name of the manufacturer of the vehicle.

(3) *Vehicle model.* Provide the name of the model of the vehicle.

(4) *New or used.* Indicate whether the vehicle financed is new or used.

(5) *Model year.* Indicate the model year of the vehicle.

(6) *Vehicle type.* Indicate the code describing the vehicle type.

(7) *Vehicle value.* Indicate the value of the vehicle at the time of origination.

(8) *Source of vehicle value.* Specify the code that describes the source of the vehicle value.

(c) *Information related to the obligor.*

(1) *Obligor credit score type.* Specify the type of the standardized credit score used to evaluate the obligor.

(2) *Obligor credit score.* Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 4(c)(3).

(3) *Obligor FICO score.* If the Obligor Credit Score Type is FICO, provide the standardized FICO credit score of the obligor.

(4) *Co-Obligor credit score type.* Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) *Co-Obligor credit score.* Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 4(c)(6).

(6) *Co-Obligor FICO score.* Provide the standardized FICO credit score of the co-obligor.

(7) *Obligor income verification level.* Indicate the code describing the extent to which the obligor's income has been verified.

(8) *Co-obligor income verification.* Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) *Obligor employment verification.* Indicate the code describing the extent to which the obligor's employment has been verified.

(10) *Co-obligor employment verification.* Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) *Obligor asset verification.* Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) *Co-obligor asset verification.* Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) *Length of employment: obligor.* Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) *Length of employment: co-obligor.* Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) *Obligor wage income.* Provide the dollar amount per month of income associated with the obligor's employment.

(16) *Co-obligor wage income.* Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) *Obligor other income.* Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) *Co-obligor other income.* Provide the dollar amount of the co-obligor's monthly income other than Co-obligor wage income.

(19) *All obligor wage income.* Provide the monthly income of all obligors derived from employment.

(20) *All obligor total income.* Provide the monthly income of all obligors.

(21) *Geographic location of obligor.* Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Item 5. Automobile leases. If the asset pool contains automobile leases, provide the following data for each lease in the asset pool:

(a) *Information related to the lease.*

(1) *Payment type.* Specify the code indicating whether payments are required monthly or if a balloon payment is due.

(2) *Subvented.* Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) *Information related to the property.*

(1) *Geographic location of the dealer.* Provide the zip code of the originating dealer.

(2) *Vehicle manufacturer.* Provide the name of the manufacturer of the vehicle.

(3) *Vehicle model.* Provide the name of the model of the vehicle.

(4) *New or used.* Indicate whether the vehicle financed is new or used.

(5) *Model year.* Indicate the model year of the vehicle.

(6) *Vehicle type.* Indicate code describing the vehicle type.

(7) *Vehicle value.* Provide the dollar value of the vehicle at the time of origination.

(8) *Source of vehicle value.* Specify the code that describes the source of the vehicle value.

(9) *Base residual value.* Provide the residual value of the vehicle at the time of origination.

(10) *Source of base residual value.* Specify the code that describes the source of the residual value.

(c) *Information related to the obligor.*

(1) *Obligor credit score type.* Specify the type of the standardized credit score used to evaluate the obligor.

(2) *Obligor credit score.* Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 5(c)(3).

(3) *Obligor FICO score.* If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.

(4) *Co-obligor credit score type.* Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) *Co-obligor credit score.* Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 5(c)(6).

(6) *Co-obligor FICO Score.* Provide the standardized FICO credit score of the co-obligor.

(7) *Obligor income verification level.* Indicate the code describing the extent to which the obligor's income has been verified.

(8) *Co-obligor income verification.* Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) *Obligor employment verification.* Indicate the code describing the extent to which the obligor's employment has been verified.

(10) *Co-obligor employment verification.* Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) *Obligor asset verification.* Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) *Co-obligor asset verification.* Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) *Length of employment: obligor.* Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) *Length of employment: co-obligor.* Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) *Obligor wage income.* Provide the dollar amount per month of income associated with the obligor's employment.

(16) *Co-obligor wage income.* Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) *Obligor other income.* Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) *Co-obligor other income.* Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(19) *All obligor wage income.* Provide the monthly income of all obligors derived from employment.

(20) *All obligor total income.* Provide the monthly income of all obligors.

(21) *Geographic location of obligor.* Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.

Item 6. Equipment loans. If the asset pool contains equipment loans, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Payment frequency.* Specify the code that describes the payment frequency on the loan.

(b) *Information related to the property.*

(1) *Equipment type.* Indicate the code that describes the equipment type.

(2) *New or used.* Indicate whether the equipment financed is new or used.

(c) Information related to the obligor.

(1) *Obligor industry.* Indicate the code that describes the industry category of the obligor.

(2) *Geographic location of obligor.* Provide the zip code of the obligor.

Item 7. Equipment leases. If the asset pool contains equipment leases, provide the following data for each lease in the asset pool:

(a) *Information related to the lease.*

(1) *Lease type.* Indicate whether the lease is a true lease or a finance lease.

(2) *Payment frequency.* Indicate the code that describes the payment frequency on the lease.

(b) *Information related to the property.*

(1) *Equipment type.* Indicate the code that describes the equipment type.

(2) *New or used.* Indicate whether the equipment financed is new or used.

(3) *Residual value.* Provide the residual value of the equipment at the time of origination. For operating leases, provide the value of the asset at the end of its useful economic life (i.e., "salvage" or "scrap value").

(4) *Source of residual value.* Specify the code that describes the source of the residual value.

(c) *Information related to the obligor.*

(1) *Obligor industry.* Indicate the code that describes the industry category of the obligor.

(2) *Geographic location of obligor.* Provide the zip code of the obligor.

Item 8. Student loans. If the asset pool contains student loans, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Subsidized.* Indicate whether the loan is subsidized or unsubsidized.

(2) *Repayment type.* Indicate code that describes the type of loan repayment terms.

(3) *Year in repayment.* If the loan is in repayment, indicate the number of years the loan has been in repayment.

(4) *Guarantee agency.* Specify the name of the agency guaranteeing the loan.

(5) *Disbursement date.* Indicate the date the loan was disbursed to the obligor.

(b) *Information related to the obligor.*

(1) *Current obligor payment status.* Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.

(2) *Geographic location of obligor.* Provide the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable of the obligor.

(3) *School type.* Indicate code describing the type of school or program.

(c) *Information about private student loans.* If the loan was not issued under a federally funded program provide the following for each loan in the pool:

(1) *Obligor credit score type.* Specify the type of the standardized credit score used to evaluate the obligor.

(2) *Obligor credit score.* Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 8(c)(3).

(3) *Obligor FICO score.* Provide the standardized FICO credit score of the obligor.

(4) *Co-obligor credit score type.* Specify the type of the standardized credit score used to evaluate the co-obligor.

(5) *Co-obligor credit score.* Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 8(c)(6).

(6) *Co-obligor FICO score.* Provide the standardized credit score of the co-obligor.

(7) *Obligor income verification level.* Indicate the code describing the extent to which the obligor's income has been verified.

(8) *Co-obligor income verification.* Indicate the code describing the extent to which the co-obligor's income has been verified.

(9) *Obligor employment verification.* Indicate the code describing the extent to which the obligor's employment has been verified.

(10) *Co-obligor employment verification.* Indicate the code describing the extent to which the co-obligor's employment has been verified.

(11) *Obligor asset verification.* Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.

(12) *Co-obligor asset verification.* Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.

(13) *Length of employment: obligor.* Provide the number of complete months of service with the obligor's current employer as of the origination date.

(14) *Length of employment: co-obligor.* Provide the number of complete months of service with the co-obligor's current employer as of the origination date.

(15) *Obligor wage income.* Provide the dollar amount per month of income associated with the obligor's employment.

(16) *Co-obligor wage income.* Provide the dollar amount per month of income associated with the co-obligor's employment.

(17) *Obligor other income.* Provide the dollar amount of the obligor's monthly income other than obligor wage income.

(18) *Co-obligor other income.* Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.

(19) *All obligor wage income.* Provide the monthly income of all obligors derived from employment.

(20) *All obligor total income.* Provide the monthly income of all obligors.

Item 9. Floorplan financings. If the asset pool contains receivables arising from floorplan financings, provide the following data for each loan in the asset pool:

(a) *Information related to the loan.*

(1) *Account origination date.* Provide the date of account origination.

(b) Information related to the property.

(1) *Product line.* Indicate the code describing the type of inventory product line.

(2) *New or used.* Indicate whether the collateral securing the loan is new or used.

(c) *Information related to the obligor.*

(1) *Credit score type.* Specify the type of the standardized credit score used to evaluate the obligor.

(2) *Credit score.* Provide the standardized credit score of the obligor.

(3) *Geographic location of obligor.* Provide the zip code of the obligor.

(d) If the issuing entity is structured as a master trust that has previously issued securities, provide the information as required by Items 1 and 9 of Schedule L–D (§ 229.1121A) for assets that were part of the pool prior to the current offering.

Item 10. Corporate debt. If the registrant's pool assets include corporate debt securities of another issuer, provide the following data for each security in the asset pool:

(a) *Title of underlying security.* Specify the title of the underlying security.

(b) *Denomination.* Give the minimum denomination of the underlying security.

(c) *Currency.* Specify the currency of the underlying security.

(d) *Trustee.* Specify the name of the trustee.

(e) *Underlying SEC file number.* Specify the registration statement file number of the registration of the offer and sale of the underlying security.

(f) *Underlying CIK number.* Specify the CIK number of the issuer of the underlying security.

(g) *Callable.* Indicate whether the security is callable.

(h) *Payment frequency.* Indicate the code describing the frequency of payments that will be made on the underlying security or agreement.

(i) *Zero Coupon indicator.* Indicate yes or no as to whether an underlying security or agreement is interest bearing.

Item 11. Resecuritizations.

(a) If the registrant's pool assets include asset-backed securities of another issuer, provide the asset-level information as required by Item 9. Corporate Debt in this Schedule L.

(b) Provide asset-level information as specified in this Schedule L and Item 1111(h) (§ 229.1111(h)) for the assets backing those securities.

* * * * *

17. Add § 229.1111B to read as follows:

§ 229.1111B (Item 1111B) Grouped account data for credit card pools.

Schedule CC

NOTE A. Submit the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. *See* Rule 301 of Regulation S–T (§ 232.301 of this chapter).

* * * * *

Provide the information regarding the underlying asset pool required by paragraph (b) in all specified combinations of distributional groups for each pool characteristic specified in paragraph (a) below. Designate a grouped account data line number to each individual combination of distributional groups.

(a) *Distributional groups.*

(1) *Credit score.* If the credit score is FICO, provide each of the following credit score distributional groups: (1) less than 500; (2) 500–549; (3) 550–599; (4) 600–649; (5) 650–699; (6) 700–749; (7) 750–799; (8) 800 and over; and (9) unknown.

(2) *Number of days past due.* Provide each of the following number of days past due distributional groups: (1) current; (2) less than 30 days; (3) 30–59 days; (4) 60–89 days; (5) 90–119 days; (6) 120–149 days; (7) 150–179 days; and (8) 180 days and over.

(3) *Account age.* Provide each of the following account age distributional groups: (1) less than 12 months; (2) 12 to 24 months; (3) 24 to 36 months; (4) 36 to 48 months; (5) 48 to 60 months; and (6) over 60 months.

(4) *State.* Provide the top 10 states for aggregate account balance. The remaining accounts should be grouped into the category "other."

(5) *Adjustable rate index.* Provide the following groups of bases for the adjustable rate indexes: (1) fixed; (2) prime; and (3) other.

(b) *Information required.* Provide the following information for each combination of distributional groups specified in paragraph (a):

(1) *Aggregate credit limit.* Provide the aggregate credit limit for all accounts included in each representative line.

(2) *Aggregate account balance.* Provide the aggregate account balance for all accounts included in each representative line.

(3) *Number of accounts.* Provide the total number of accounts included in each representative line.

(4) *Weighted average APR.* Provide the weighted average annual percentage rate (APR) of all accounts included in each representative line.

(5) *Weighted average net APR.* Provide the weighted average net annual percentage rate (APR) of all accounts included in each representative line. Weighted average net APR is the weighted average APR less servicing fees.

Instruction. The table below illustrates how the distributional groups in paragraph (a) and the information requirements in paragraph (b) relate to each other. A single line, or "grouped account data" line should disclose the aggregate credit limit, aggregate account balance, number of accounts, weighted average APR and weighted average net coupon of the accounts that possess the multiple characteristics designated by that grouped account data line. The combination of all distributional groups should produce 14,256 grouped account data lines representing composition of the entire underlying asset pool. For example, grouped account data line 2 in the table below presents the information required by paragraph (b) by combining all the credit card accounts in the underlying pool that fall within the 500–549 credit score group, delinquency status of less than 30 days, account age of 12 to 24 months with obligors located in the state of Alabama, where the adjustable rate index is based on a floating percentage.

Grouped account data line number	Credit Score (a)(1)	Days payment is past due (a)(2)	Account Age (a)(3)	Top 10 State (a)(4)	Adjustable rate index (a)(5)	Aggregate credit Limit ($) (b)(1)	Aggregate account balance ($) (b)(2)	Number of accounts (#) (b)(3)	Weighted average APR (%) (b)(4)	Weighted average net APR (%) (b)(5)
1	Less than 500.	Current	Less than 12 months.	AK	Fixed.					
2	500–549	< 30 days	12–24 months	AL	Prime.					
3	550–599	30–59 days	24–36 months	AR	Other.					
4	600–649	60–89 days	36–48 months	AZ	Fixed.					
5	650–699	90–119 days	48–60 months	CA	Prime.					
6	700–749	120–149 days	Over 60 months	CO	Other.					
7	750–799	150–179 days	Less than 12 months.	CT	Fixed.					
8	800 and over	180+ days	12–24 months	DE	Prime.					
9	Less than 500.	< 30 days	24–36 months	DC	Other.					
10	500–549	30–59 days	36–48 months	FL	Fixed.					
11	550–599	60–89 days	48–60 months	Other	Prime.					
12	600–649	90–119 days	Over 60 months	AK	Other.					

Grouped account data line number	Credit Score (a)(1)	Days payment is past due (a)(2)	Account Age (a)(3)	Top 10 State (a)(4)	Adjustable rate index (a)(5)	Aggregate credit Limit ($) (b)(1)	Aggregate account balance ($) (b)(2)	Number of accounts (#) (b)(3)	Weighted average APR (%) (b)(4)	Weighted average net APR (%) (b)(5)
13	650–699	120–149 days	Less than 12 months.	AL	Fixed.					
14	700–749	150–179 days	12–24 months	AR	Prime.					
15	750–799	180+ days	24–36 months	AZ	Other.					
16	800 and over	Current	36–48 months	CA	Fixed.					

§ 229.1112 [Amended]

18. Amend § 229.1112 by:

a. Removing Instruction 2 to Item 1112(b); and

b. Redesignating Instructions 3 and 4 to Items 1112(b) as Instructions 2 and 3 to Item 1112(b).

19. Amend § 229.1113 by adding paragraph (h) as follows:

§ 229.1113 (Item 1113) Structure of the transaction.

* * * * *

(h) *Waterfall Computer Program.* Provide a Waterfall Computer Program in the manner specified in Rule 314 of Regulation S–T (§ 232.314). This paragraph (h) does not apply to issuers of asset-backed securities backed primarily by receivables due on stranded costs.

(1) For purposes of this paragraph, a Waterfall Computer Program shall mean a computer program that:

(i) Gives effect to the provisions in the transaction agreements that set forth the rules by which the funds available for payments or distributions to the holders of each class of securities, and each other person or account entitled to payments or distributions, from the pool assets, pool cash flows, credit enhancement or other support, and the timing and amount of such payments or distributions, are determined;

(ii) Provides a user with the ability to programmatically input:

(A) The user's own assumptions regarding the future performance and cash flows coming from the pool assets underlying the asset-backed security, including but not limited to assumptions about future interest rates, default rates, prepayment speeds, loss-given-default rates, and any other assumptions required to be described pursuant to Section 229.1113; and

(B) The current state and performance of the pool assets underlying the asset-backed security by uploading directly into the computer program the initial XML-based Asset Data File (as defined in § 232.11 of this chapter) and any subsequent monthly updates to that file; and

(iii) Produces a programmatic output, in machine-readable form, of all resulting cash flows associated with the asset-backed security, including the amount and timing of principal and interest payments payable or distributable to a holder of each class of securities, and each other person or account entitled to payments or distributions in connection with the securities, until the final legal maturity date as a function of the inputs described in paragraph (h)(1)(ii) of this section.

Instruction: For purposes of this definition, the transaction agreement provisions that should be given effect to include, but are not limited to, any provisions setting forth the priorities of payments or distributions (and any contingencies affecting such priorities) to the holders of each class of securities and any other persons or accounts entitled to payments or distributions, and any related provisions necessary to determine the quantitative results of such provisions (including without limitation the provisions required to be described in Item 1113(b), Item 1113(c), Item 1113(d), and items (2)–(4), (6), (7) and (9) of Item 1113(a)) .

(2) Provide a sample expected output for each class of securities in the asset-backed transaction. The sample should be based on the Asset Data File (as defined in 232.11 of this chapter) filed pursuant to Item 1111(h)(1) and filed with the Waterfall Computer Program. The sample should disclose the sample input assumptions used to generate the expected output.

(3) State in the prospectus that the information provided in response to this paragraph (h) is provided as a downloadable source code for a computer program in the Python programming language filed with the Securities and Exchange Commission on its Web site at *www.sec.gov*. Identify the CIK and file number of the filing.

(4) File the Waterfall Computer Program as part of any prospectus filed in accordance with Rule 424(h) (§ 230.424(h)) or any final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (§ 230.424(b)). The Waterfall Computer Program shall give effect to the transaction provisions as of the date of such filing.

(5) With respect to a credit card master trust, file the Waterfall Computer Program in accordance with Item 6.07(b) of Form 8–K (§ 249.308). The Waterfall Computer Program shall give effect to the transaction provisions as of the date of such filing.

§ 229.1114 [Amended]

20. Amend § 229.1114 by:

a. Revising the heading for "Instructions to Item 1114:" to read "Instructions to Item 1114(b)";

b. Removing Instruction 3 to Item 1114(b); and

c. Redesignating Instructions 4 and 5 to Item 1114(b) as Instructions 3 and 4 to Item 1114(b).

21. Amend § 229.1121 by revising paragraph (a)(9) and adding paragraphs (c), (d), and (e) to read as follows:

§ 229.1121 (Item 1121) Distribution and pool performance information.

(a) * * *

(9) Delinquency and loss information for the period. Refer to Item 1100(b) of this Regulation AB for presentation of historical delinquency and loss information.

* * * * *

(c) If the sponsor or an originator is required to repurchase or replace any of the pool assets for breach of a representation and warranty pursuant to the transaction agreements, provide the amount, if material, of the publicly securitized assets originated or sold by the obligor (i.e., the sponsor or the originator) that were the subject of a demand to repurchase or replace for breach of the representations and warranties concerning the pool assets that has been made in the period covered by the report pursuant to the transaction agreements. Also provide the percentage of that amount that were not then repurchased or replaced by the obligor. Of those assets that were not then repurchased or replaced, disclose whether an opinion of a third party not affiliated with the obligor had been furnished to the trustee that confirms that the assets did not violate the representations and warranties.

(d) *Asset-level performance information.* Provide asset-level performance information for each asset in the pool in a manner specified in Schedule L–D (§ 229.1121A). This paragraph (d) does not apply to issuers of asset-backed securities backed primarily by receivables due on credit cards, charge cards or stranded costs. State in the report on Form 10–D that the information provided in response to this subparagraph and Schedule L–D is filed with the Securities and Exchange Commission as a machine readable data file on the Commission's Web site at *www.sec.gov.* Identify the CIK of the issuer and file number.

(e) *Grouped account data for credit card pools.* If the asset-backed securities are backed primarily by receivables due on credit cards or charge cards, provide the information for the underlying pool in a manner specified in Schedule CC (§ 229.1111B). State in the report on Form 10–D that the information provided in response to this subparagraph and Schedule CC is filed with the Securities and Exchange Commission as a machine-readable data file on the Commission's Web site at *www.sec.gov.* Identify the CIK of the issuer and file number.

22. Add § 229.1121A to read as follows:

§ 229.1121A Asset-level performance information.

Schedule L–D

NOTE A. Submit the disclosures as an Asset Data File (as defined in § 232.11 of this chapter) in the format required by the EDGAR Filer Manual. See Rule 301 of Regulation S–T (§ 232.301 of this chapter).

Instruction. The following definitions apply to the terms used in this schedule unless otherwise specified:

Debt service reduction. A modification of the terms of a loan resulting from a bankruptcy proceeding, such as a reduction of the amount of the monthly payment on the related mortgage loan.

Deficient valuation. A bankruptcy proceeding whereby the bankruptcy court may establish the value of the mortgaged property at an amount less than the then-outstanding principal balance of the mortgage loan secured by the mortgaged property or may reduce the outstanding principal balance of a mortgage loan.

FNMA. The Federal National Mortgage Association.

HAMP. The federal Home-Affordable Modification Plan program.

Underwritten. The amount of revenues or expenses adjusted based on a number of assumptions made by the mortgage originator or seller.

Item 1. General. Provide the following data for each asset in the asset pool:

(a) Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.

(b) Asset number. Provide the unique ID number of the asset.

Instruction to Item 1(b). The asset number should be the same number that was previously used to identify the asset in Schedule L (§ 229.1111A).

(c) Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.

(d) Reporting period begin date. Specify the beginning date of the reporting period.

(e) Reporting period end date. Specify the servicer cut-off date for the reporting period.

(f) Activity during the reporting period.

(1) Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.

(2) Actual interest paid. Indicate the amount of interest collected during the reporting period.

(3) Actual principal paid. Indicate the amount of principal collected during the reporting period.

(4) Actual other amounts paid. Indicate the total of any other amounts collected during the reporting period.

(5) Other principal adjustments. Indicate any other amounts that would cause the principal balance of the loan to be decreased or increased during the reporting period.

(6) Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.

(7) Current asset balance. Indicate the outstanding principal balance of the asset as of the servicer cut-off date.

(8) Current scheduled asset balance. Indicate the scheduled principal balance of the asset as of the servicer cut-off date.

(9) Current scheduled payment amount. Indicate the total payment amount that was scheduled to be collected for this reporting period (including all fees and escrows).

(10) Current scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected for this reporting period.

(11) Current scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected for this reporting period.

(12) Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.

(13) Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the reporting period end date.

(14) Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.

(15) Pay history. Provide the coded string of values that describes the payment performance of the asset over the most recent 12 months.

(16) Next due date. For loans that have not been paid-off, indicate the date on which the next payment is due on the asset.

(17) Next interest rate. For loans that have not been paid-off, indicate the interest rate that is in effect as of the next scheduled remittance due to the investor.

(18) Remaining term to maturity. For loans that have not been paid-off, indicate the number of months between the cut-off date and the asset maturity date.

(g) Information related to servicing.

(1) Current servicing fee—amount. Indicate the dollar amount of the fee earned by the current servicer for administering the loan for this reporting period.

(2) Current servicer. Indicate the name or MERS organization number of the entity that currently services the asset.

(3) Servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the servicing transfer.

(4) Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.

(5) Cumulative outstanding advanced amount. Specify the outstanding cumulative amount advanced by the servicer.

(6) Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.

(7) Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.

(8) Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc).

(9) Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.

(h) Modification indicator. Indicate yes or no whether the asset was modified from its original terms during the reporting period.

(i) Repurchase indicator. Indicate yes or no whether the asset has been repurchased from the pool. If the asset has been repurchased, provide the following additional information.

(1) Repurchase notice. Indicate yes or no whether a notice of repurchase has been received.

(2) Repurchase date. Indicate the date the asset was repurchased.

(3) Repurchaser. Specify the name of the repurchaser.

(4) Repurchase reason. Indicate the code that describes the reason for the repurchase.

(j) Liquidated indicator. Indicate yes or no whether the asset has been liquidated. An asset is considered liquidated if the related collateral has been sold or disposed, or if the asset has been charged-off in its entirety without realizing upon the collateral.

(k) Charge-off indicator. Indicate yes or no as to whether the asset has been charged-off. The asset is charged-off when it will be treated as a loss or expense because payment is unlikely.

(1) Charged-off principal amount. Specify the amount of uncollected principal charged-off.

(2) Charged-off interest amount. Specify the amount of uncollected interest charged-off.

(l) Information related to paid-off loans.

(1) Paid-in-full indicator. Indicate yes or no whether the asset is paid in full.

(2) Information related to prepayment penalties. If the obligor is subject to

prepayment penalties, provide the following additional information for each loan:

(i) Pledged Prepayment Penalty Paid. Provide the total amount of the prepayment penalty that was collected from the obligor.

(ii) Pledged prepayment penalty waived. Provide the total amount of the prepayment penalty that was incurred by the obligor, but not collected by the servicer.

(iii) Reason for not collecting pledged prepayment penalty. Indicate the code that describes the reason that a prepayment penalty due from a borrower was not collected by the servicer.

Item 2. Residential mortgages. If the asset pool contains residential mortgages, provide the following data for each loan in the asset pool:

(a) Information related to delinquent loans.

(1) Non-pay reason. Indicate the code that describes the reason for loan delinquency.

(2) Non-pay status. Indicate the code that describes the delinquency status of the loan.

(3) Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.

(b) Information related to ARMs. If the loan is an ARM, provide the following additional information for each loan:

(1) Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment.

(2) Next interest rate change date. Provide the next date that the note rate is scheduled to change.

(3) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.

(4) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(5) Option ARM indicator. Indicate yes or no whether the loan is an Option ARM.

(6) Exercised ARM conversion option indicator. Indicate yes or no whether the borrower exercised an option to convert an ARM loan to a fixed interest rate loan.

(c) Information related to bankruptcy. For obligors who have filed for bankruptcy, provide the following additional information:

(1) Bankruptcy file date. Provide the date on which the obligor filed for bankruptcy.

(2) Bankruptcy case number. Provide the case number assigned by the court to the bankruptcy filing.

(3) Post-petition due date. Provide the date on which the next payment is due under the terms of the bankruptcy plan.

(4) Bankruptcy release reason. If the bankruptcy has been released, indicate the code that describes the reason for the release.

(5) Bankruptcy release date. If the bankruptcy has been released, provide the date on which the loan was removed from bankruptcy as a result of dismissal, discharge, and/or the granting of a motion for relief.

(6) Contractual due date. Provide the actual due date of the loan payment had bankruptcy not been filed.

(7) Debt reaffirmed indicator. Indicate yes or no whether the obligor excluded this debt from the bankruptcy and reaffirmed the debt obligation.

(8) Trustee pays all indicator. Indicate yes or no whether post-petition payments are sent to the bankruptcy trustee by the obligor and then forwarded to the servicer by the trustee.

(d) Loss mitigation type indicator. Indicate the code that describes the type of loss mitigation the servicer is pursuing with the borrower, loan, or property.

(e) Information related to loan modifications.

(1) Modification effective payment date. Provide the date of first payment due post modification.

(2) Modification loan balance. Provide the loan balance as of modification effective payment date as reported on the modification documents.

(3) Total capitalized amount. Provide the amount added to the principal balance of the loan pursuant to a loan modification.

(4) Pre-modification interest (note) rate. Provide the scheduled interest rate of the loan immediately preceding the modification effective payment date—or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.

(5) Post-modification interest (note) rate. Provide the interest rate in effect as of the modification effective payment date.

(6) Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the interest rate index to establish the new rate.

(7) Pre-modification P&I payment. Provide the scheduled total principal and interest payment amount preceding the modification effective payment date—or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.

(8) Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).

(9) Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).

(10) Pre-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (prior to modification).

(11) Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (after modification).

(12) Pre-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (prior to modification).

(13) Post-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (after modification).

(14) Pre-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (prior to modification).

(15) Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (after modification).

(16) Post-modification principal and interest payment. Provide total principal and interest payment amount as of the modification effective payment date.

(17) Pre-modification maturity date. Provide the loan's original maturity date (or, if the loan has been modified before, the maturity date in effect immediately preceding the most recent modification effective payment date).

(18) Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.

(19) Pre-modification interest reset period (if changed). Provide the number of months of the original interest reset period of the loan.

(20) Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.

(21) Pre-modification next interest rate change date. Provide the next interest reset date under the original terms of the loan (one month prior to new payment due date).

(22) Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.

(23) Modification front-end DTI. Provide the front-end DTI ratio (total monthly housing expense divided by monthly income) used to qualify the modification.

(24) Income verification indicator. Indicate yes or no whether a transcript of tax return (received pursuant to the filing of IRS Form 4506–T) was obtained to corroborate modification front-end DTI (calculated using pay stubs, W–2s and/or CPA certified tax returns).

(25) Modification back-end DTI. Provide the back-end DTI ratio (total monthly debt divided by monthly income) used to qualify the modification.

(26) Pre-modification interest only term. Provide the number of months of the interest-only period prior to the modification effective payment date.

(27) Post-modification interest only term. Provide the number of months of the interest-only period as of the modification effective payment date.

(28) Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of loan modification, not including deferred amounts.

(29) Forgiven principal amount (cumulative). Provide the sum total of all principal balance reductions as a result of loan modification over the life of the deal.

(30) Forgiven interest amount (cumulative). Provide the sum total of all interest incurred and forgiven as a result of loan modification over the life of the deal.

(31) Forgiven principal amount (current period). Provide the total principal balance reduction as a result of loan modification during the current period.

(32) Forgiven interest amount (current period). Provide the total gross interest forgiven as a result of loan modification during the current period.

(33) Modified next payment adjust date. Provide the due date on which the next

payment adjustment is scheduled to occur for an ARM loan per the modification agreement.

(34) Modified ARM indicator. If the loan is remaining an ARM loan, indicate whether the loan's existing ARM parameters are changing per the modification agreement.

(35) Interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.

(36) Maximum future rate under step agreement. If the loan modification includes a step provision, provide the maximum interest rate to which the loan may step up.

(37) Date of maximum rate. If the loan modification includes a step provision, provide the date on which the maximum interest rate will be reached.

(38) Non-interest bearing principal deferred amount (current period). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.

(39) Non-interest bearing principal deferred amount (cumulative balance). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.

(40) Recovery of deferred principal (current period). Provide the amount of deferred principal collected from the obligor during the current period.

(41) Non-interest bearing deferred interest and fees Amount (current period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the current period.

(42) Non-interest bearing deferred interest and fees amount (cumulative balance). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.

(43) Recovery of deferred interest and fees (current period). Provide the amount of deferred interest and fees collected from the obligor during the current period.

(44) Forgiven non-principal and interest advances to be reimbursed by trust. Provide the total amount of expenses (including all escrow and corporate advances) that have been waived or forgiven by the servicer per the modification agreement reimbursable to the servicer pursuant to the terms of the transaction document. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.

(45) Reimbursable modification escrow and corporate advances (capitalized). Provide the total amount of escrow and corporate advances made by the servicer as of the time of the loan modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.

(46) Reimbursable modification servicing fee advances (capitalized). Provide the total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the loan modification.

(47) HAMP Indicator. Indicate yes or no whether the loan was modified under the terms of the Home-Affordable Modification Plan (HAMP). If so, provide the following additional information:

(i) HAMP: Loan participation end date. Provide the date upon which the last principal and interest payment is due during the 60-month participation of the U. S. Treasury and FNMA in the loan modification.

(ii) HAMP: Loan modification incentive termination date. Provide the date upon which obligor participation in the program is terminated because the borrower has defaulted or redefaulted.

(iii) HAMP: Obligor pay-for-performance success payments. Provide the amount paid to the servicer from U.S. Treasury/FNMA that reduces the principal balance of the interest bearing portion of the loan as the obligor stays current after modification.

(iv) HAMP: One-time bonus incentive eligibility. Indicate yes or no whether the loan qualifies for the one-time bonus incentive payment of $1,500.00 payable to the mortgage holder subject to certain de minimis constraints.

(v) HAMP: One-time bonus incentive amount. Indicate whether mortgage holder has or will receive $1,500 paid to mortgage holders for modifications made while a borrower is still current on mortgage payments.

(vi) HAMP: Monthly payment reduction cost share. Provide the amount of the subsidized payment from Treasury/FNMA during the current period to reimburse the investor for one half of the cost of reducing the monthly payment from 38% to 31% Front-End DTI.

(vii) HAMP: Administrative fees associated with participating in the program. Provide the amount of the fees incurred by the servicer while administering this program, as allowed by the governing documents with investors.

(viii) HAMP: Current asset balance including deferred amount. Provide the sum amount of the current asset balance plus only the principal portion of the deferred amount.

(ix) HAMP: Scheduled ending balance including deferred amount. Provide the sum amount of the current scheduled asset balance plus only the principal portion of the deferred amount.

(x) HAMP: Home price depreciation payments. Provide the amount payable to mortgage holders to partially offset probable losses from home price declines.

(f) Information related to forbearance or trial modification. If the type of loss mitigation is forbearance, provide the following additional information. A forbearance plan refers to a period during which either no payment or a payment amount less than the contractual obligation is required from the obligor. A trial modification refers to a temporary loan modification during which an obligor's application for a permanent loan modification is under evaluation.

(1) Forbearance plan or trial modification start date. Provide the date on which a forbearance plan or trial modification started.

(2) Forbearance plan or trial modification scheduled end date. Provide the date on which a forbearance plan or trial modification is scheduled to end.

(g) Information related to repayment plan. If the type of loss mitigation is a repayment plan, provide the following additional information. A repayment plan refers to a period during which an obligor has agreed to make monthly mortgage payments greater than the contractual installment in an effort to bring a delinquent loan current.

(1) Repayment plan start date. Provide the date on which a repayment plan started.

(2) Repayment plan scheduled end date. Provide the date on which a repayment plan is scheduled to end.

(3) Repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of a repayment plan.

(h) Deed-in-lieu date. If the type of loss mitigation is deed-in-lieu, provide the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-in-lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure.

(i) Short sale accepted offer amount. If the type of loss mitigation is short sale, provide the amount accepted for a short sale. Short Sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale.

(j) Information related to loss mitigation exit. If the loan has exited loss mitigation efforts during the reporting period, provide the following addition information:

(1) Loss mitigation exit date. Provide the date on which the servicer deems a loss mitigation effort to have ended.

(2) Loss mitigation exit code. Indicate the code that describes the reason the loss mitigation effort ended.

(k) Information related to loans in the foreclosure process.

(1) Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.

(2) Date of first legal action. Provide the date on which legal foreclosure action was taken.

(3) Expected foreclosure sale date. Provide the expected date if known on which the foreclosure sale will take place.

(4) Foreclosure sale scheduled date. Provide the date on which the sale has been set to occur either by the court or Trustee.

(5) Foreclosure sale date. Provide the date on which a foreclosure sale occurs.

(6) Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.

(7) Sale valid date. If state law provides for a period for confirmation, ratification, redemption or upset period, provide the date of the end of the period.

(8) Foreclosure bid amount. Provide the amount bid by the servicer at the foreclosure sale.

(9) Foreclosure exit date. If the loan exited foreclosure during the current period or first available subsequent period, provide the date on which the loan exited foreclosure.

(10) Foreclosure exit reason. If the loan exited foreclosure during the current period or first available subsequent period, indicate the code that describes the reason the foreclosure proceeding ended.

(11) Third-party sale proceeds. If the reason for the end of foreclosure proceeding

is third-party sale, provide the amount for which the property was sold.

(12) Judgment date. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, provide the date on which a court granted the judgment in favor of the creditor.

(13) Publication date. Provide the date on which the publication of trustee's sale information is published in the appropriate venue.

(14) NOI date. If a notice of intent (NOI) has been sent, provide the date on which the servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.

(l) Information related to REO. If the loan is REO, provide the following additional information. REO (Real Estate Owned) refers to property owned by a lender after an unsuccessful sale at a foreclosure auction.

(1) Most recent REO list date. Provide the most recent listing date for the REO.

(2) Most recent REO list price. Provide the amount of the current listing price for the REO.

(3) Accepted REO offer amount. If a REO offer has been accepted, provide the amount accepted for the REO sale.

(4) Accepted REO offer date. If a REO offer has been accepted, provide the date on which the REO sale amount was accepted.

(5) REO original list date. Provide the original list date for the REO property.

(6) REO original list price. Provide the amount of the original listing price for the REO.

(7) Actual REO sale closing date. If a REO sale is closed, provide the date of the closing of the REO sale.

(8) Gross liquidation proceeds. If a REO sale has closed, provide the gross amount due to the issuing entity as reported on line 420 of the HUD–1 settlement statement.

(9) Net sales proceeds. If a REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).

(10) Current monthly loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the current period, including subsequent loss adjustments and any forgiven principal as a result of a modification that is passed through to the issuing entity.

(11) Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that is passed through to the issuing entity.

(12) Subsequent recovery amount. Provide the current period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.

(13) Eviction start date. If an eviction process has begun, provide the date on which the servicer initiates eviction of the obligor.

(14) Eviction completed date. If an eviction process has been completed, provide the date on which the court revoked legal possession of the property from the obligor.

(15) REO exit date. If a loan exited REO during the current period or first available subsequent period, provide the date on which the loan exited REO status.

(16) REO exit reason. If a loan exited REO during the current period or first available subsequent period, indicate the code that describes the reason the loan exited REO status.

(m) Information related to losses.

(1) Information related to loss claims.

(i) Interest advanced. Provide the amount of interest advanced that is reimbursed to the servicer.

(ii) UPB at liquidation. Provide the amount of actual unpaid principal balance (UPB) at the time of liquidation.

(iii) Servicing fees claimed. Provide the amount of accrued servicing fees (claimed at time of servicer reimbursement after liquidation).

(iv) Attorney fees claimed. Provide the amount of total attorney fees advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(v) Attorney cost claimed. Provide the amount of total attorney cost advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(vi) Property taxes claimed. Provide the amount of real property taxes advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).

(vii) Property maintenance. Provide the amount of total property maintenances such as lawn care, trash removal, snow removal, etc., (claimed at time of servicer reimbursement after liquidation).

(viii) Insurance premiums claimed. Provide the amount of advances paid by the servicer for any type of insurance (claimed at time of servicer reimbursement after liquidation).

(ix) Utility expenses claimed. Provide the amount of utilities advanced paid by the servicer (claimed at time of servicer reimbursement after liquidation).

(x) Appraisals or BPO expenses claimed. Provide the amount of cost advanced by the servicer for appraisal and/or broker's professional opinion (BPO) expenses (claimed at time of servicer reimbursement after liquidation).

(xi) Property inspection expenses claimed. Provide the amount of cost advanced by the servicer for property inspection expenses (claimed at time of servicer reimbursement after liquidation).

(xii) Miscellaneous expenses claimed. Provide the amount of miscellaneous expenses advanced by the servicer that do not fit into any other category (claimed at time of servicer reimbursement after liquidation).

(xiii) Pre-securitization servicing advances claimed. Provide the amount of unreimbursed advances by the servicer prior to the securitization of the deal (claimed at time of servicer reimbursement after liquidation).

(xiv) REO management fees. If the loan is in REO, provide the amount of REO management fees (including auction fees).

(xv) Cash for keys/cash for deed. Provide the amount of the payment to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.

(xvi) Performance incentive fees. Provide the amount of payment to the servicer in exchange for carrying out a deed-in-lieu or short sale.

(2) Information related to loss recoveries.

(i) Positive escrow balance. Provide the amount of escrow balance at the time of loss claim (report only if positive).

(ii) Suspense balance. Provide the total dollar amount held in suspense at the time of liquidation.

(iii) Hazard claims proceeds. Provide the amount of hazard loss proceeds collected.

(iv) Pool insurance claim proceeds. Provide the amount of pool claim proceeds collected.

(v) Private mortgage insurance claim proceeds. Provide the amount of private mortgage insurance claim proceeds collected.

(vi) Property tax refunds. Provide the amount of property tax refunds collected.

(vii) Insurance refunds. Provide the amount of insurance premium refunds collected.

(3) Bankruptcy loss amount. Provide the amount of any realized loss resulting from a deficient valuation or debt service reduction.

(4) Special hazard loss amount. Provide the amount of any realized loss suffered by a mortgaged property that is classified as a special hazard in the governing documents.

(n) Information related to mortgage insurance claims. If a mortgage insurance claim (MI claim) has been submitted to the primary mortgage insurance company for reimbursement, provide the following additional information:

(1) MI claim filed date. Provide the date on which the servicer filed an MI claim.

(2) MI claim amount. Provide the amount of the MI claim filed by the servicer.

(3) MI paid date. If a MI claim has been paid, provide the date on which the MI company paid the MI claim.

(4) MI claim paid amount. If a MI claim has been decided, provide the amount of the claim paid by the MI company.

(5) MI claim denied/rescinded date. If a MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.

(6) Marketable title transferred to MI date. If the deed of a property has been sent to the MI company, provide the date of actual title conveyance to the MI company.

Item 3. Commercial mortgages. If the asset pool contains commercial mortgages, also provide the following data for each asset in the asset pool:

(a) Information related to the loan.

(1) Current remaining term. Provide the number of months until the earlier of the scheduled loan maturity or the current hyper-amortizing date.

(2) Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.

(3) Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.

(4) Information related to ARMs.

(i) Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.

(ii) Next interest rate change date. Provide the next date that the interest rate is scheduled to change.

(iii) Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.

(iv) Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.

(2) Negative amortization/deferred interest capitalized amount. Indicate the amount for the current reporting period that represents negative amortization or deferred interest that is added to the principal balance.

(i) Cumulative deferred interest. Indicate the cumulative deferred interest for the current and prior reporting cycles net of any deferred interest collected.

(ii) Deferred interest collected. Indicate the amount of deferred interest collected in the current reporting period.

(b) Workout strategy. Indicate the code that best describes the steps being taken to resolve the loan.

(c) Information related to modifications.

(1) Date of last modification. Provide the date of the most recent modification. A modification includes any material change to the loan documents.

(2) Modification code. Indicate the code that describes the type of loan modification.

(3) Modified note rate. Indicate the new initial interest rate (post-modification).

(4) Modified payment amount. Indicate the new initial principal and interest payment amount (post-modification).

(5) Modified maturity date. Indicate the new maturity date of the loan (post-modification).

(6) Modified amortization period. Indicate the new amortization period in months (post-modification).

(d) Information related to the property. Provide the following information for *each* of the properties that collateralizes a loan identified above.

(1) Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."

(2) Property geographic location. Provide the zip code of the location of the property.

(3) Property type. Indicate the code that describes how the property is being used.

(4) Net rentable square feet. Provide the net rentable square feet area of a property.

(5) Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.

(6) Year built. Provide the year that the property was built.

(7) Valuation amount. The valuation amount of the property as of the valuation date.

(8) Valuation date. The date the valuation amount was determined.

(9) Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.

(10) Property status. Specify the code that describes the status of the property.

(11) Defeasance status. Indicate the code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.

(12) Financial information related to the property. Provide the following information as of the most recent date available.

(i) Financial reporting begin date. Specify the beginning date of the financial information presented in response to this subparagraph.

(ii) Financial period reporting end date. Specify the ended date of the financial information presented in response to this subparagraph.

(iii) Revenue. Provide the total underwritten revenue from all sources for a property.

(iv) Operating expenses. Provide the total operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.

(v) Net operating income. Provide the total revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.

(vi) Net cash flow. Provide the total revenue less the total operating expenses and capital costs.

(vii) NOI/NCF indicator. Indicate the code that best describes how net operating income and net cash flow were calculated.

(viii) DSCR (NOI). Provide the ratio of net operating income to debt service during the reporting period.

(ix) DSCR (NCF). Provide the ratio of net cash flow to debt service during the reporting period.

(x) DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.

(13) Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).

(14) Square feet of largest tenant. Provide total square feet leased by the largest tenant.

(15) Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.

(16) Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).

(17) Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.

(18) Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.

(19) Third largest tenant. Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).

(20) Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.

(21) Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.

Item 4. Automobile loans. If the asset pool contains vehicle loans, provide the following data for each loan in the asset pool:

(a) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

(c) Repossessed. Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information:

(1) Repossession proceeds. Provide the total amount of proceeds received on disposition.

(2) Repossession fees. Provide the amount of fees paid in connection with the repossession and disposition of the vehicle.

Item 5. Automobile leases.

If the asset pool contains vehicle leases, provide the following data for each lease in the asset pool:

(a) Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.

(b) Updated residual value. If the residual value of the vehicle was updated during the reporting period, provide the updated value.

(c) Source of updated residual value. Specify the code that describes the source of the residual value.

(d) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(e) Excess wear and tear received. Specify the amount of excess wear and tear fees received upon return of the vehicle.

(f) Excess mileage received. Specify the amount of excess mileage fees received upon return of the vehicle.

(g) Sales proceeds. If the vehicle has been sold, specify the amount of proceeds received on sale of the vehicle.

(h) Lease term extension indicator. Indicate whether the lease term has been extended from the original term.

(i) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

Item 6. Equipment loans.

If the asset pool contains equipment loans, provide the following data for each loan in the asset pool:

(a) Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

Item 7. Equipment leases.

If the asset pool contains equipment leases, provide the following data for each lease in the asset pool:

(a) Updated residual value. If the residual value of the equipment was updated during the reporting period, provide the updated value.

(b) Source of updated residual value. Specify the code that describes the source of the residual value.

(c) Termination indicator. Specify the code that describes the reason why the lease was terminated.

(d) Liquidation proceeds. If the asset has been liquidated, specify the amount of proceeds received.

(e) Amounts recovered. If the asset was previously charged-off, specify any amounts received after charge-off.

Item 8. Student loans.

If the asset pool contains student loans, provide the following data for each loan in the asset pool:

(a) Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.

(b) Capitalized interest. Specify the amount of interest accrued to be capitalized during the reporting period.

(c) If there is activity related to a guarantor, provide the following additional information:

(1) Principal collections from guarantor. Provide the amount of principal received from the guarantor during this reporting period.

(2) Interest claims received from guarantor. Provide the amount of interest claims received from guarantor during this reporting period.

(3) Claim in process. Indicate yes or no whether a claim is in process.

(4) Claim outcome. Indicate yes or no whether a claim has been rejected.

Item 9. Floorplan financings.

If the asset pool contains receivables arising from floorplan financings, provide the following data for each loan in the asset pool:

(a) Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.

(b) Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.

(c) Updated credit score information. Provide updated credit score information, if available.

(1) Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.

(2) Most recent credit score. Provide the most recent credit score of the obligor.

(3) Most recent credit score date. Provide the date of the most recently obtained credit score of the obligor.

Item 10. Resecuritizations.

If the registrant's pool assets include asset-backed securities of another issuer, provide asset-level performance information as specified in this Schedule L–D and Item 1121(d) for the assets backing those securities.

23. Amend § 229.1122 by:

a. Revising paragraph (c)(1);

b. Redesignating paragraph (c)(2) as paragraph (c)(3);

c. Adding new paragraph (c)(2);

d. Adding new paragraph (d)(1)(v);

e. Redesignating, in Instructions to Item 1122, instructions 1, 2, and 3 as instructions 2, 3, and 4; and

f. Adding a new instruction 1.

The revision and additions read as follows:

§ 229.1122 (Item 1122) Compliance with applicable servicing criteria.

* * * * *

(c) *Additional disclosure for the Form 10–K report.*

(1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10–K. Also disclose whether the identified instance involved the servicing of the assets backing the asset-backed securities covered in this Form 10–K report.

(2) Discuss any steps taken to remedy a material instance of noncompliance previously identified by an asserting party for its activities with respect to asset-backed securities transactions taken as a whole involving such party and that are backed by the same asset type backing the asset-backed securities.

* * * * *

(d) * * *

(1) * * *

(v) Aggregation of information is mathematically accurate and the information conveyed accurately reflects the information.

* * * * *

Instructions to Item 1122: 1. The assessment should cover all asset-backed securities transactions involving such party and that are backed by the same asset type backing the class of asset-backed securities which are the subject of the Commission filing. The asserting party may take into account divisions among transactions that are consistent with actual practices. However, if the asserting party includes in its platform less than all of the transactions backed by the same asset type that it services, a description of the scope of the platform should be included in the assessment.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

24. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.139a [Amended]

25. Amend § 230.139a by

a. Removing the phrase "General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) ("S–3 ABS")" in the introductory text and adding in its place the phrase "Form SF–3 (§ 239.13 of this chapter)("SF–3 ABS"); and

b. Removing the phrase "S–3 ABS" and adding in its place the phrase "SF–3 ABS" everywhere it appears.

26. Amend § 230.144 by adding a sentence to the end of paragraph (c)(2) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(c) * * *

(2) *Non-reporting issuers.* * * * If the securities to be sold are structured finance products, as defined in Securities Act Rule 144A(a)(8)(§ 230.144A(a)(8)), then the following two conditions must be satisfied:

(i) An underlying transaction agreement grants any purchaser, any security holder and a prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request of the purchaser or holder, information as would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act and any ongoing information regarding the securities that would be required by Section 15(d) of the Exchange Act if the issuer were required to report under that section;

(ii) An issuer must represent that it will provide such information to any purchaser, security holder, or prospective purchaser, upon request of the purchaser or holder.

* * * * *

27. Amend § 230.144A by

a. Adding paragraph (a)(8);

b. Adding paragraph (d)(4) (iii); and

c. Adding paragraph (f).

The additions read as follows:

§ 230.144A Private resales of securities to institutions.

* * * * *

(a) * * *

(8) For purposes of this section, a "structured finance product" means

(i) A synthetic asset-backed security; or

(ii) A fixed-income or other security collateralized by any pool of self liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables, which entitles the security holders to receive payments that depend on the cash flow from the assets, including—

(A) An asset-backed security as used in Item 1101(c) of Regulation AB (§ 229.1101(c)),

(B) A collateralized mortgage obligation,

(C) A collateralized debt obligation,

(D) A collateralized bond obligation,

(E) A collateralized debt obligation of asset-backed securities,

(F) A collateralized debt obligation of collateralized debt obligations; or

(G) A security that at the time of the offering is commonly known as an asset-backed security or a structured finance product.

* * * * *

(d) * * *

(4) * * *

(iii) If the securities offered or sold are structured finance products, then the requirements of paragraph (d)(4)(i) of this section shall be satisfied if:

(A) An underlying transaction agreement grants any initial purchaser, any security holder and a prospective purchaser designated by a security holder the right to obtain from the issuer promptly, upon request of the purchaser or holder, information as would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act and any ongoing information regarding the securities that would be required by Section 15(d) of the Exchange Act if the issuer were required to report under that section;

(B) The issuer represents that it will provide such information that is required by paragraph (d)(4)(ii)(A) of this section, upon request of the purchaser or holder.

* * * * *

(f)(1) If the securities offered or sold are structured finance products, the issuer shall file with the Commission a notice of the initial placement of securities that are represented as eligible for resale in reliance on this rule containing the information required by Form 144A–SF (17 CFR 239.144A). The notice shall be signed by the issuer and filed no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

(2) If the issuer fails to file Form 144A–SF as required under paragraph (f)(1) of this section, then the exemption under this section will not be available for subsequent resales of newly issued structured finance products of the issuer or any affiliate of the issuer until the notice that was required to be filed has been filed with the Commission.

§ 230.167 [Amended]

28. Amend § 230.167 in paragraph (a) by revising the phrase "meeting the requirements of General Instruction I.B.5 of Form S–3 (§ 239.13 of this chapter) and registered under the Act on Form S–3 pursuant to § 230.415" to read "registered on Form SF–3 pursuant to § 230.415(a)(1)(vii)".

29. Amend § 230.190 by:

a. Revising paragraph (b)(1);

b. Removing the phrase "securities; and" in paragraph (b)(6) and adding in its place "securities.";

c. Removing paragraph (b)(7);

d. Redesignating paragraph (c) introductory text as paragraph (c)(1) and paragraphs (c)(1) through (4) as paragraphs (c)(1)(i) through (iv); and

e. Adding new paragraph (c)(2).

The revision and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

* * * * *

(b) * * *

(1) If the offering of asset-backed securities is registered on Form SF–3 (§ 239.45 of this chapter), the offering of the underlying securities itself must be eligible to be registered under Form SF–3 (§ 239.45), Form S–3 (§ 239.13 of this chapter), or F–3 (§ 239.33 of this chapter) as a primary offering of such securities;

* * * * *

(c)(1) * * *

(2) Notwithstanding paragraph (c)(1) of this section, if the pool assets for the asset-backed securities are collateral certificates or special units of beneficial interests, those collateral certificates or special units of beneficial interests must be registered concurrently with the registration of the asset-backed securities. However, pursuant to Securities Act Rule 457(s) (§ 230.457(s) of this chapter) no separate registration fee for the certificates or special units of beneficial interest is required to be paid.

30. Add § 230.192 to read as follows:

§ 230.192 Information relating to privately-issued structured finance products.

(a) If an issuer of structured finance products (as defined in 17 CFR 230.144A(a)) has represented and covenanted to provide information pursuant to Rule 503(b)(3) of Regulation D (§ 230.503(b)(3)), or has represented and covenanted to provide information pursuant to Rule 144A(d)(4)(iii) (§ 230.144A(d)(4)(iii)) or Rule 144(c)(2) (§ 230.144(c)(2)), then the issuer must provide such information, upon request of the purchaser or security holder.

(b) A failure to provide the information as required in paragraph (a) of this section would constitute an engagement in a transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser of the securities.

31. Amend § 230.401 by:

a. Revising the phrase "and (g)(3)" in paragraph (g)(1) to read ",(g)(3), and (g)(4)"; and

b. Adding paragraph (g)(4).

The addition reads as follows:

§ 230.401 Requirements as to proper form.

* * * * *

(g) * * *

(4) Notwithstanding that the registration statement may have been declared effective previously, requirements as to proper form under this section will have been violated for:

(i) Any offering of securities where the requirements of General Instructions I.A.1 and 2 of Form SF–3 have not been met as of the last day of the most recent fiscal quarter prior to the offering; or

(ii) For any offering of securities where the requirement of General Instruction I.A.4 of Form SF–3 has not been met as of ninety days after the end of the depositor's fiscal year end prior to such offering.

§ 230.405 [Amended]

32. Amend § 230.405 by removing the phrase "or Rule 431 (§ 230.431);" in paragraph (1) of the definition of a "free writing prospectus" and adding in its place the phrase "Rule 430D (§ 230.430D), or Rule 431(§ 230.431);".

33. Amend § 230.415 by:

a. Revising paragraph (a)(1)(vii);

b. Revising paragraph (a)(1)(ix); and

c. Adding paragraph (a)(1)(xii).

The revisions and addition read as follows:

§ 230.415 Delayed or continuous offering and sale of securities.

(a) * * *

(1) * * *

(vii) Asset-backed securities (as defined in 17 CFR 229.1101) registered (or qualified to be registered) on Form SF–3 (§ 239.45 of this chapter) which are to be offered and sold on an immediate or delayed basis by or on behalf of the registrant; *Instructions to paragraph (a)(1)(vii):* The requirements of General Instruction I.B.1(c) of Form SF–3 (§ 239.45 of this chapter) must be met for any offerings of an asset-backed security (as defined in 17 CFR 229.1101) registered in reliance on paragraph (a)(1)(vii). In accordance with those instructions, with respect to each offering of securities, the chief executive officer of the depositor shall certify that that to his or her knowledge, the securitized assets backing the issue have characteristics that provide a reasonable basis to believe that they will produce, taking into account internal credit enhancements, cash flows at times and in amounts necessary to service any payments of the securities as described in the prospectus; and that he or she has reviewed the necessary prospectus and documents for this certification.

* * * * *

(ix) Securities, other than asset-backed securities (as defined in 17 CFR 229.1101), the offering of which will be commenced promptly, will be made on a continuous basis and may continue for a period in excess of 30 days from the date of initial effectiveness;

* * * * *

(xii) Asset-backed securities (as defined in 17 CFR 229.1101) which are to be offered and sold on a continuous basis if the offering is commenced promptly and being conducted on the condition that the consideration paid for such securities will be promptly refunded to the purchaser unless

(A) All of the securities being offered are sold at a specified price within a specified time, and

(B) The total amount due to the seller is received by him by a specified date.

* * * * *

34. Amend § 230.424 by:

a. Adding in paragraph (b)(2) the phrase "or, in the case of asset-backed securities, Rule 430D (§ 230.430D)" after the phrase "in reliance on Rule 430B (§ 230.430B)".

b. Revising the phrase in the instruction following the note to paragraph (b)(8) of Rule 424 "mortgage-related securities on a delayed basis under § 230.415(a)(1)(vii) or asset-backed securities on a delayed basis under § 230.415(a)(1)(x)" to read "asset-backed securities on a delayed basis under § 230.415(a)(1)(vii)"; and

c. Adding paragraph (h).

The addition reads as follows:

§ 230.424 Filing of prospectuses, number of copies.

* * * * *

(h) Three copies of a form of prospectus relating to an offering of asset-backed securities on a delayed basis pursuant to § 230.415(a)(1)(vii) that contains substantially all the information previously omitted from the prospectus, or substantially all the information except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price, filed as part of an effective registration statement as required by Rule 430D (§ 230.430D) shall be filed with the Commission by a means reasonably calculated to result in filing at least five business days before the date of the first sale in the offering, or if used earlier, the second business day after first use.

Instruction to paragraph (h): The filing requirements of paragraph (h) do not apply if a filing is made solely to add fees pursuant to Securities Act Rule 457 (§ 230.457) and for no other purpose.

§ 230.430B [Amended]

35. Amend § 230.430B in paragraph (a) by removing the phrase "Rule 415(a)(1)(vii) or (a)(1)(x) (§ 230.415(a)(1)(vii) or (a)(1)(x))" and adding in its place the phrase "Rule 415(a)(1)(x) (§ 230.415(a)(1)(x))"; and by removing the phrase "(a)(1)(vii) or".

§ 230.430C [Amended]

36. Amend § 230.430C by adding the phrase "or Rule 430D (§ 230.430D) directly after the phrase "in reliance on Rule 430B (§ 230.430B)".

37. Add § 230.430D to read as follows:

§ 230.430D Prospectus in a registration statement after effective date for asset-backed securities offerings.

(a)(1) A form of prospectus filed as part of a registration statement for offerings of asset-backed securities pursuant to Rule 415(a)(1)(vii) (§ 230.415(a)(1)(vii)) may omit from the information required by the form to be in the prospectus information that is unknown or not reasonably available to the issuer pursuant to Rule 409 (§ 230.409), provided that with respect to each offering pursuant to such registration statement, the issuer has filed with the Commission substantially all the information previously omitted from the prospectus filed as part of an effective registration statement relating to each offering that is required to be in the prospectus (except for the omission of information with respect to the offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price) at least five business days in advance of the first sale in the offering in accordance with Rule 424(h) (§ 230.424(h)).

(2) If a material change occurs in the information provided in accordance with paragraph (a)(1) of this section, other than price, five additional days before the first sale in the offering must elapse from the date information reflecting the change and containing substantially all the information required to be in the prospectus (except for the information with respect to offering price, underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds or other matters dependent upon the offering price) is filed with the Commission pursuant to Rule 424(h) (§ 230.424(h)). Such form of prospectus shall be deemed to have been filed as part of the registration statement for the purpose of section 7 of the Act.

(b) A form of prospectus filed as part of a registration statement that omits information in reliance upon paragraph (a) of this section meets the requirements of section 10 of the Act for the purpose of section 5(b)(1) thereof. This provision shall not limit the information required to be contained in a form of prospectus in order to meet the requirements of section 10(a) of the Act for the purposes of section 5(b)(2) thereof or exception (a) of section 2(a)(10) thereof.

(c) Information omitted from a form of prospectus in reliance on paragraph (a) of this section and is contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b)(2) or (b)(5) must contain all of the information that is required to be included in the prospectus pursuant to the requirements of the registration statement.

(d)(1) Except as provided in paragraph (d)(2) of this section, information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section may be included subsequently in the prospectus that is part of a registration statement by:

(i) A post-effective amendment to the registration statement;

(ii) A form of prospectus filed pursuant to Rule 424(h) (§ 230.424(h));

(iii) A prospectus filed pursuant to Rule 424(b) (§ 230.424(b)); or

(iv) If the applicable form permits, including the information in the issuer's periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)) that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement in accordance with the applicable requirements, subject to the provisions of paragraph (h) of this section.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section that adds a new structural feature or credit enhancement must be included subsequently in the prospectus that is part of a registration statement by a post-effective amendment to the registration statement.

(e)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b), other than as provided in paragraph (f) of this section, shall be deemed part of and included in the registration

statement as of the date such form of filed prospectus is first used after effectiveness.

(2) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section and contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(h) shall be deemed part of and included in the registration statement as of the date such form of filed prospectus is filed with the Commission pursuant to Rule 424(h) or, if used earlier than the date of filing, the date it is first used after effectiveness.

(f)(1) Information omitted from a form of prospectus that is part of an effective registration statement in reliance on paragraph (a) of this section, and is contained in a form of prospectus required to be filed with the Commission pursuant to Rule 424(b)(2) or (b)(5), shall be deemed to be part of and included in the registration statement on the earlier of the date such subsequent form of prospectus is first used or the date and time of the first contract of sale of securities in the offering to which such subsequent form of prospectus relates.

(2) The date on which a form of prospectus is deemed to be part of and included in the registration statement pursuant to paragraph (f)(1) of this section shall be deemed, for purposes of liability under section 11 of the Act of the issuer and any underwriter at the time only, to be a new effective date of the part of such registration statement relating to the securities to which such form of prospectus relates, such part of the registration statement consisting of all information included in the registration statement and any prospectus relating to the offering of such securities (including information relating to the offering in a prospectus already included in the registration statement) as of such date and all information relating to the offering included in reports and materials incorporated by reference into such registration statement and prospectus as of such date, and in each case not modified or superseded pursuant to Rule 412 (§ 230.412). The offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) If a registration statement is amended to include or is deemed to include, through incorporation by reference or otherwise, except as otherwise provided in Rule 436 (§ 230.436), a report or opinion of any person made on such person's authority as an expert whose consent would be required under section 7 of the Act because of being named as having prepared or certified part of the registration statement, then for purposes of this section and for liability purposes under section 11 of the Act, the part of the registration statement for which liability against such person is asserted shall be considered as having become effective with respect to such person as of the time the report or opinion is deemed to be part of the registration statement and a consent required pursuant to section 7 of the Act has been provided as contemplated by section 11 of the Act.

(4) Except for an effective date resulting from the filing of a form of prospectus filed for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K (§ 229.512(a)(1)(ii) of this chapter), the date a form of prospectus is deemed part of and included in the registration statement pursuant to this paragraph shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any director (or person acting in such capacity) of the issuer;

(ii) Any person signing any report or document incorporated by reference into the registration statement, except for such a report or document incorporated by reference for purposes of including information required by section 10(a)(3) of the Act or pursuant to Item 512(a)(1)(ii) of Regulation S–K (such person except for such reports being deemed not to be a person who signed the registration statement within the meaning of section 11(a) of the Act).

(5) The date a form of prospectus is deemed part of and included in the registration statement pursuant to paragraph (f)(2) of this section shall not be an effective date established pursuant to paragraph (f)(2) of this section as to:

(i) Any accountant with respect to financial statements or other financial information contained in the registration statement as of a prior effective date and for which the accountant previously provided a consent to be named as required by section 7 of the Act, unless the form of prospectus contains new audited financial statements or other financial information as to which the accountant is an expert and for which a new consent is required pursuant to section 7 of the Act or Rule 436; and

(ii) Any other person whose report or opinion as an expert or counsel has, with their consent, previously been included in the registration statement as of a prior effective date, unless the form of prospectus contains a new report or opinion for which a new consent is required pursuant to section 7 of the Act or Rule 436.

(g) Notwithstanding paragraph (e) or (f) of this section or paragraph (a) of Rule 412, no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement after the effective date of such registration statement or portion thereof in respect of an offering determined pursuant to this section will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(h) Where a form of prospectus filed pursuant to Rule 424(b) relating to an offering does not include disclosure of omitted information regarding the terms of the offering, the securities or the plan of distribution for the securities that are the subject of the form of prospectus, because such omitted information has been included in periodic or current reports filed pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 incorporated or deemed incorporated by reference into the prospectus, the issuer shall file a form of prospectus identifying the periodic or current reports that are incorporated or deemed incorporated by reference into the prospectus that is part of the registration statement that contain such omitted information. Such form of prospectus shall be required to be filed, depending on the nature of the incorporated information, pursuant to Rule 424(b)(2) or (b)(5).

(i) Issuers relying on this section shall furnish the undertakings required by Item 512(a) of Regulation S–K.

38. Amend § 230.433 by

a. Revising in paragraph (b)(1)(i) the phrase "I.B.5, I.C., or I.D. thereof" to read "I.C., or I.D. thereof or on Form SF–3 (§ 239.45 of this chapter)"; and

b. Revising in paragraph (c)(1)(i) the phrase "Rule 430B or Rule 430C) (§ 230.430B or § 230.430C)" to read "Rule 430B, Rule 430C or Rule 430D)(§ 230.430B, § 230.430C, or § 230.430D)".

39. Amend § 230.456 by adding paragraph (c) to read as follows:

§ 230.456 Date of filing; timing of fee payment.

* * * * *

(c)(1) Notwithstanding paragraph (a) of this section, an asset-backed issuer that registers asset-backed securities offerings on Form SF–3 (§ 239.45), may, but is not required to, defer payment of all or any part of the registration fee to the Commission required by section 6(b)(2) of the Act on the following conditions:

(i) If the issuer elects to defer payment of the registration fee, it shall pay the registration fees (pay-as-you-go registration fees) calculated in accordance with Rule 457(s) in advance of or in connection with an offering of securities from the registration statement at the time of filing the prospectus pursuant to Rule 424(h) for the offering; and

(ii) The issuer reflects the amount of the pay-as-you-go registration fee paid or to be paid in accordance with paragraph (c)(1)(i) of this section by updating the "Calculation of Registration Fee" table to indicate the class and aggregate offering price of securities offered and the amount of registration fee paid or to be paid in connection with the offering or offerings on the cover page of a prospectus filed pursuant to Rule 424(h).

40. Amend § 230.457 by adding paragraphs (s) and (t) to read as follows:

§ 230.457 Computation of fee.

* * * * *

(s) Where securities are asset-backed securities being offered pursuant to a registration statement on Form SF–3 (§ 239.45), the registration fee is to be calculated in accordance with this section. When the issuer elects to defer payment of the fees pursuant to Rule 456(c), the "Calculation of Registration Fee" table in the registration statement must indicate that the issuer is relying on Rule 456(c) but does not need to include the number of units of securities or the maximum aggregate offering price of any securities until the issuer updates the "Calculation of Registration Fee" table to reflect payment of the registration fee, including a pay-as-you-go registration fee in accordance with Rule 456(c). The registration fee shall be calculated based on the fee payment rate in effect on the date of the fee payment.

(t) Where the securities to be offered are collateral certificates or special unit of beneficial interest underlying asset-backed securities (as defined in § 229.1101(c)) which are being registered concurrently, no separate fee for the certificates or special units of beneficial interest shall be payable.

41. Amend § 230.501 by adding paragraph (i) to read as follows:

§ 230.501 Definitions and terms used in Regulation D.

* * * * *

(i) *Structured finance product.* A "structured finance product" means

(1) A synthetic asset-backed security; or

(2) A fixed-income or other security collateralized by any pool of self liquidating financial assets, such as loans, leases, mortgages, and secured or unsecured receivables, which entitles the security holders to receive payments that depend on the cash flow from the assets, including—

(i) An asset-backed security as used in Item 1101(c) of Regulation AB (§ 229.1101(c));

(ii) A collateralized mortgage obligation;

(iii) A collateralized debt obligation;

(iv) A collateralized bond obligation;

(v) A collateralized debt obligation of asset-backed securities;

(vi) A collateralized debt obligation of collateralized debt obligations; or

(vii) A security that at the time of the offering is commonly known to the trade as an asset-backed security or a structured finance product.

42. Amend § 230.502 by revising paragraph (b)(1) and adding paragraph (b)(3) to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(b)(1) *When information must be furnished.* If the issuer sells securities other than structured finance products under § 230.505 or § 230.506 to any purchaser that is not an accredited investor, the issuer shall furnish the information specified in paragraph (b)(2) of this section to such purchaser a reasonable time prior to sale. The issuer is not required to furnish the information specified in paragraph (b)(2) of this section to purchasers when it sells securities under § 230.504, or to any accredited investor. If the issuer sells structured finance products under § 230.506, the issuer shall comply with the information requirements specified in paragraph (b)(3) of this section with respect to each purchaser a reasonable time prior to sale.

Note to § 230.502(b)(1): When an issuer provides information to investors pursuant to this paragraph (b)(1), it should consider providing such information to accredited investors as well, in view of the anti-fraud provisions of the federal securities laws.

* * * * *

(3) If the issuer sells securities that are structured finance products under § 230.506, the following conditions apply:

(i) The underlying transaction agreement shall contain a provision that grants any purchaser in the offering the right to obtain from the issuer promptly, upon the purchaser's or security holder's request, information that would be required if the offering were registered on Form S–1 or Form SF–1 under the Securities Act; and

(ii) The issuer shall represent that such information required in paragraph (b)(3)(i) shall be provided to any purchaser in the offering, upon the purchaser's request.

* * * * *

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

43. The authority citation for Part 232 is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

44. Amend § 232.11 by adding a definition for "Asset Data File" in alphabetical order to read as follows:

§ 232.11 Definition of terms used in part 232.

* * * * *

Asset Data File. The term Asset Data File means the machine-readable computer code that presents information in eXtensible Markup Language (XML) electronic format pursuant to, with respect to any registration statement on Form SF–1 (§ 239.44) or Form SF–3 (§ 239.45), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10–D, Items 1121(d) and 1121(e) (§ 229.1121(d) and § 229.1121(e) of this chapter).

* * * * *

45. Amend § 232.101 by:

a. Adding paragraphs (a)(1)(xiv) and (a)(1)(xv); and

b. Removing from the note following paragraph (a)(3) the phrase "F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32 and 239.33 of this chapter" and adding in its place the phrase "SF–3, F–2 and F–3 (see §§ 239.12, 239.13, 239.16b, 239.32, 239.33, and 239.45 of this chapter".

The additions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiv) Asset Data File (as defined in § 232.11 of this chapter).

(xv) Waterfall Computer Program (as defined in § 229.1113(h)(1) of this chapter).

* * * * *

46. Amend § 232.201 by:

a. Revising paragraph (a) introductory text;

b. Removing from Note 1 to paragraph (b) the phrase "and F–3 (*see* §§ 239.12, 239.13, 239.16b, 239.32 and 239.33" and adding in its place the phrase "F–3, and SF–3 (*see* §§ 239.12, 239.13, 239.16b, 239.32, 239.33, and 239.45"; and

c. Adding paragraph (d).

The revision and addition read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter), a Form D (§ 239.500 of this chapter), an Interactive Data File (§ 232.11 of this chapter), a Form 144A–SF (§ 239.144A of this chapter) an Asset Data File (as defined in § 232.11 of this chapter), or a Waterfall Computer Program (as defined in § 229.1113(h) 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.

* * * * *

(d) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an Asset Data File (as defined in § 232.11 of this chapter) or a Waterfall Computer Program (as defined in § 229.1113(h) of this chapter), required pursuant to, with respect to any registration statement on Form SF–1 (§ 239.44 of this chapter) or Form SF–3 (§ 239.45 of this chapter), Items 1111(h) and 1111(i) (§ 229.1111(h) and 229.1111(i) of this chapter) or, with respect to any distribution report on Form 10–D, Item 1121(d) and Item 1121(e) (§ 229.1121(d) and 229.1121(e) of this chapter), the electronic filer still can timely satisfy the requirement to submit the Asset Data File or the Waterfall Computer Program in the following manner by:

(1) Posting on a Web site the Asset Data File or the Waterfall Computer Program unrestricted as to access and free of charge;

(2) Specifying the Web site address in the required exhibit for the Asset Data File or the Waterfall Computer Program;

(3) Providing the following legend in the required exhibit for the Asset Data File or the Waterfall Computer Program; and

IN ACCORDANCE WITH THE TEMPORARY HARDSHIP EXEMPTION PROVIDED BY RULE 201 OF REGULATION S–T, THE DATE BY WHICH THE ASSET DATA FILE OR THE COMPUTER WATERFALL PROGRAM IS REQUIRED TO BE SUBMITTED HAS BEEN EXTENDED BY SIX BUSINESS DAYS.

(4) Submitting the required Asset Data File or the Waterfall Computer Program no later than six business days after the Asset Data File or the Waterfall Computer Program originally was required to be submitted.

§ 232.202 [Amended]

47. Amend § 232.202 in paragraph (a) introductory text by revising the phrase "or a Form D (§ 239.500 of this chapter)" to read "a Form D (§ 239.500 of this chapter), a Form 144A–SF (§ 239.144A of this chapter), or an Asset Data File (§ 232.11 of this chapter) or a Waterfall Computer Program (as defined in § 229.1113(h) of this chapter),".

48. Amend § 232.305 by revising paragraph (b) to read as follows:

§ 232.305 Number of characters per line; tabular and columnar information.

* * * * *

(b) Paragraph (a) of this section does not apply to HTML documents, Interactive Data Files (§ 232.11), XBRL–Related Documents (§ 232.11) or a Waterfall Computer Program (§ 229.1113(h)(1)).

49. Revise § 232.312 to read as follows:

§ 232.312 Accommodation for certain information in filings with respect to asset-backed securities.

For filings with respect to asset-backed securities, the information provided in response to Item 1105 of Regulation AB (§ 229.1105 of this chapter) may be filed on EDGAR as a Portable Document Format (PDF) document in the format required by the EDGAR Filer Manual. Notwithstanding Rule 104 of Regulation S–T (§ 232.104 of this chapter), the PDF document filed pursuant to this paragraph shall be an official filing.

50. Add § 232.314 to read as follows:

§ 232.314 Waterfall Computer Program.

With respect to any registration statement on Form SF–1 (Section 239.44) or Form SF–3 (Section 239.45) relating to an offering of an asset-backed security that is required to comply with Item 1113(h) of Regulation AB, the Waterfall Computer Program (as defined in Item 1113(h)(1) of Regulation AB) must be written in the Python programming language and able to be downloaded and run on a local computer properly configured with a Python interpreter. The Waterfall Computer Program should be filed in the manner specified in the EDGAR Filer Manual.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

51. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l,* 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll,* 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

52. Revise § 239.11 to read as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 230.1101.

53. Amend Form S–1 (referenced in § 239.11) by revising General Instruction I. to read as follows:

Note: The text of Form S–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM S–1

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form S–1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof or asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

54. Amend § 239.13 by:

a. Removing paragraph (a)(4);

b. Redesignating paragraphs (a)(5), (a)(6), (a)(7) and (a)(8) as paragraphs (a)(4), (a)(5), (a)(6), and (a)(7);

c. Revising paragraph (b)(5); and

d. Revising in paragraph (e) introductory text the phrase "(a)(2), (a)(3) and (a)(4)" to read "(a)(2) and (a)(3)".

The revision reads as follows:

§ 239.13 Form S–3, for registration under the Securities Act of 1933 of securities of certain issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(5) This form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

55. Amend Form S–3 (referenced in § 239.13) by:

a. Removing General Instruction I.A.4;

b. Redesignating General Instructions I.A.5, I.A.6, I.A.7, and I.A.8 as General Instructions I.A.4, I.A.5, I.A.6, and I.A.7;

c. Revising General Instruction I.B.5;

d. Removing the phrase "I.B.5," in General Instruction II.F; and

e. Removing General Instruction V.

The revision reads as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM S–3

* * * * *

GENERAL INSTRUCTIONS

I. * * *

B. * * *

5. This form shall not be used to register offerings of asset-backed securities, as defined in 17 CFR 230.1101.

* * * * *

56. Add § 239.44 to read as follows:

§ 239.44 Form SF–1, registration statement under the Securities Act of 1933 for offerings of asset-backed securities.

This form shall be used for registration under the Securities Act of 1933 of all offerings of asset-backed securities, as defined in 17 CFR 229.1101(c).

57. Add Form SF–1 (referenced in § 239.44) to read as follows:

Note: The text of Form SF–1 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM SF–1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

_____

(Exact name of registrant as specified in its charter)

_____

Commission File Number of depositor:
Central Index Key Number of depositor:

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if available): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(State or other jurisdiction of incorporation or organization)

_____

(I.R.S. Employer Identification Number)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Note: Specific details relating to the fee calculation shall be furnished in notes to the table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the table. If the filing fee is calculated pursuant to Rule 457(o) under the Securities Act, only the title of the class of securities to be registered, the proposed maximum aggregate offering price for that class of securities and the amount of registration fee need to appear in the Calculation of Registration Fee table. Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 429 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–1

This Form shall be used for the registration under the Securities Act of 1933 ("Securities Act") of asset-backed securities of all registrants for which no other form is authorized or prescribed, except that this Form shall not be used for securities of foreign governments or political subdivisions thereof.

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly those comprising Regulation C (17 CFR 230.400 to 230.494) thereunder. That Regulation contains general requirements regarding the preparation and filing of the registration statement.

B. Attention is directed to Regulation S–K and Regulation AB (17 CFR Part 229) for the requirements applicable to

the content of registration statements under the Securities Act.

C. Terms used in this form have the same meaning as in Item 1101 of Regulation AB.

III. Registration of Additional Securities

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: the facing page; a statement that the contents of the earlier registration statement, identified by file number and CIK number of the issuer, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Incorporation of Certain Information by Reference

A. All registrants that are required to file the information required by Item 1111A of Regulation AB (17 CFR 229.1111A) Asset-level information; Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools; and Item 1113(h) of Regulation AB (17 CFR 229.1113(h)), Waterfall Computer Program; as exhibits to Form 8–K (17 CFR 249.308) that are filed with the Commission pursuant to Item 6.06 and Item 6.07, respectively, of that form. Incorporation by reference must comply with Item 10 of this Form.

B. Registrants may elect to file the information required by Item 1105 of Regulation AB (17 CFR 229.1105), Static Pool, as an exhibit to Form 8–K (17 CFR 249.308) that is filed with the Commission pursuant to Item 6.08 of that form. Incorporation by reference must comply with Item 10 of this Form.

C. If a registrant is structured as a revolving asset master trust, and is required to provide the information required by Item 9(d) of Schedule L (17 CFR 229.1111A), Floorplan Financings, it may elect to provide it in accordance with Item 10 of this Form.

PART I

INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant Obligors;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 7. Information with Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets; Item 1111A of Regulation AB (17 CFR 229.1111A), Asset-level information; and Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Item 8. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Item 9. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 10. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that all current reports filed pursuant to Items 6.06, 6.07 and if applicable, 6.08 of Form 8–K pursuant to Section Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the time of effectiveness shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(b)(1) You must state

(i) That you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) That you will provide this information upon written or oral request;

(iii) That you will provide this information at no cost to the requester;

(iv) The name, address, and telephone number to which the request for this information must be made; and

(v) The registrant's Web site address, including the uniform resource locator (URL) where the incorporated reports and other documents may be accessed.

Note to Item 10(b)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

(i) Identify the reports and other information that you file with the SEC; and

(ii) State that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549, between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 11. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II INFORMATION NOT REQUIRED IN PROSPECTUS

Item 12. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 13. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 14. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 15. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–1 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20_____

_____

(Registrant)

By

_____

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

_____

(Signature)

_____

(Title)

_____

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, its senior officer in charge of securitization and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

58. Add § 239.45 to read as follows:

§ 239.45 Form SF–3, for registration under the Securities Act of 1933 for offerings of asset-backed issuers offered pursuant to certain types of transactions.

This form shall be used for registration under the Securities Act of 1933 of offerings of asset-backed securities, as defined in 17 CFR 229.1101(c). Any registrant which meets the requirements of paragraph (a) may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in paragraph (b) provided that the requirement applicable to the specified transaction are met. Terms used have the same meaning as in Item 1101 of Regulation AB.

(a) *Registrant Requirements.* Registrants must meet the following conditions in order to use Form SF–3 for registration under the Securities Act of securities offered in transactions paragraph (b) of this section:

(1) To the extent the sponsor, with respect to the depositor or an issuing entity previously established by the depositor or affiliate of the depositor, was required to retain risk with respect to a previous ABS offering involving the same asset class, pursuant to paragraph (b)(1)(i) of this section, at the time of filing this registration statement, such sponsor was holding the required risk.

(2) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) of this section with respect to a previous offering of securities involving the same asset class, the following requirements shall apply:

(i) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provision that is required by paragraph (b)(1)(ii) of this section;

(ii) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by paragraph (b)(1)(iii) of this section;

(iii) Such depositor and each such issuing entity must have filed all reports they had undertaken to file for the previous twelve months (or such shorter period that each such entity had undertaken to file reports) regarding such asset-backed securities as would be required under section 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) if they were subject to the reporting requirements of that section.

(3) The registrant has provided disclosure in the registration statement that it has met the registrant requirements of paragraphs (a)(1) and (a)(2) of this section.

(4) To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as

defined in Item 1101 of Regulation AB (17 CFR 229.1101)) are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials). In addition, such material must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

(b) If the registrant meets the registrant requirements specified in paragraph (a) above, an offering meeting the following conditions may be registered on Form SF–3:

(1) Offerings for cash where the following have been satisfied:

(i) *Risk Retention.* With respect to each offering of securities that is registered on this form:

(A) The sponsor or an affiliate of the sponsor retains a net economic interest in the securities offered in one of two the allowed methods described in paragraph (b)(1)(i)(B) of this section and provides disclosure in the prospectus that is filed as part of this registration statement relating to the interest that is retained.

(B) The sponsor or affiliate of the sponsor shall retain the economic interest described in paragraph (b)(1)(i)(A) of this section in one of the following methods:

(1) Retention of a minimum of five percent of nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate; or

(2) In the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that payments by the originator's interest are not less than five percent of payments by, collectively, the securities held by investors, at all times and in all cases.

Instruction to § 239.45*(b)(1)(i)(A):* Net economic interest is measured at issuance of the securities with respect to this paragraph *(b)(1)(i)(A)* and at origination of the assets backing the securities with respect to paragraph *(b)(1)(i)(B)* of this section and shall be maintained as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in the offering.

(ii) *Third Party Opinion Provision in Transaction Agreement.* With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, contains a provision requiring any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute any noncompliant pool asset to furnish an opinion or certificate, furnished to the trustee at least each quarter, from a non-affiliated third party relating to any asset for which the trustee has asserted a breach of a representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

(iii) *Certification.* The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36)) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this form.

(iv) *Undertaking to file Exchange Act Reports.* With respect to each offering of securities that is registered on this form, the registrant undertakes to file reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder, if the registrant were subject to the reporting requirements of that section, in accordance with Item 512(a)(7)(ii) of Regulation S–K (§ 229.512(a)(7)(ii)) as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions. This registration statement shall also provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Section 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section.

(v) *Delinquent Assets.* Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date.

(vi) *Residual Value for Certain Securities.* With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

(2) Securities relating to an offering of asset-backed securities registered in accordance with paragraph (b)(1) where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 240.190(c)(1) through (4)).

59. Add Form SF–3 (referenced in § 239.45) to read as follows:

Note: The text of Form SF–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM SF–3

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

(Exact name of registrant as specified in its charter)

(State or other jurisdiction of incorporation or organization)

(I.R.S. Employer Identification Number)

Commission File Number of depositor:

Central Index Key Number of depositor:

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if available): _____

_____

(Exact name of sponsor as specified in its charter)

_____

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

_____

(Name, address, including zip code, and telephone number, including area code, of agent for service)

_____

(Approximate date of commencement of proposed sale to the public)

If any of the securities being registered on this Form are to be offered on a delayed basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: [ ]

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering: [ ]

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered	Proposed maximum offering price per unit	Proposed maximum aggregate offering price	Amount of registration fee

Notes to the "Calculation of Registration Fee" Table ("Fee Table"):

1. Specific details relating to the fee calculation shall be furnished in notes to the Fee Table, including references to provisions of Rule 457 (§ 230.457 of this chapter) relied upon, if the basis of the calculation is not otherwise evident from the information presented in the Fee Table.

2. If the filing fee is calculated pursuant to Rule 457(r) under the Securities Act, the Fee Table must state that it registers an unspecified amount of securities of each identified class of securities and must provide that the issuer is relying on Rule 456(b) and Rule 457(r). If the Fee Table is amended in a post-effective amendment to the registration statement or in a prospectus filed in accordance with Rule 456(b)(1)(ii) (§ 230.456(b)(1)(ii) of this chapter), the Fee Table must specify the aggregate offering price for all classes of securities in the referenced offering or offerings and the applicable registration fee.

Any difference between the dollar amount of securities registered for such offerings and the dollar amount of securities sold may be carried forward on a future registration statement pursuant to Rule 457 under the Securities Act.

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form SF–3

This instruction sets forth registrant requirements and transaction requirements for the use of Form SF–3. Any registrant which meets the requirements of I.A. below ("Registrant Requirements") may use this Form for the registration of asset-backed securities (as defined in 17 CFR 229.1101(c)) under the Securities Act of 1933 ("Securities Act") which are offered in any transaction specified in I.B. below ("Transaction Requirement") provided that the requirement applicable to the specified transaction are met. Terms used in this form have the same meaning as in Item 1101 of Regulation AB.

A. Registrant Requirements. Registrants must meet the following conditions in order to use this Form SF–3 for registration under the Securities Act of securities offered in transactions specified in I.B. below:

1. To the extent the sponsor, with respect to the depositor or an issuing entity previously established by the depositor or affiliate of the depositor, was required to retain risk with respect to a previous ABS offering involving the same asset class, pursuant to General Instruction I.B.1(a) of this form, at the time of filing this registration statement, such sponsor was holding the required risk.

2. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form required to comply with the transaction requirements in General Instructions I.B.1(b), I.B.1(c), and I.B.1(d) of this form with respect to a previous offering of securities involving the same asset class, the following requirements shall apply:

(a) Such depositor and each such issuing entity must have filed on a timely basis all transaction agreements containing the provision that is required by General Instruction I. B.1(b);

(b) Such depositor and each such issuing entity must have filed on a timely basis all certifications required by General Instruction I. B.1(c);

(c) Such depositor and each such issuing entity must have filed all reports they had undertaken to file for the previous twelve months (or such shorter period that each such entity had undertaken to file reports) regarding such asset-backed securities as would be required under section 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) if they were subject to the reporting requirements of that section.

3. The registrant has provided disclosure in the registration statement that it has met the registrant requirements of General Instruction I.A.1 and I.A.2 of Form SF–3.

4. To the extent the depositor or any issuing entity previously established, directly or indirectly, by the depositor or any affiliate of the depositor (as defined in Item 1101 of Regulation AB (17 CFR 229.1101)) are or were at any time during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement on this Form subject to the requirements of section 12 or 15(d) of the Exchange Act (15 U.S.C. 78*l* or 78o(d)) with respect to a class of asset-backed securities involving the same asset class, such depositor and each such issuing entity must have filed all material required to be filed regarding such asset-backed securities pursuant to section 13, 14 or 15(d) of the Exchange Act (15 U.S.C. 78m, 78n or 78o(d)) for such period (or such shorter period that each such entity was required to file such materials or each such entity had undertaken to file such materials, as applicable). In addition, such material

must have been filed in a timely manner, other than a report that is required solely pursuant to Item 1.01, 1.02, 2.03, 2.04, 2.05, 2.06, 4.02(a), 6.01, or 6.03 of Form 8–K (17 CFR 249.308). If Rule 12b–25(b) (17 CFR 240.12b–25(b)) under the Exchange Act was used during such period with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by that rule. Regarding an affiliated depositor that became an affiliate as a result of a business combination transaction during such period, the filing of any material prior to the business combination transaction relating to asset-backed securities of an issuing entity previously established, directly or indirectly, by such affiliated depositor is excluded from this section, provided such business combination transaction was not part of a plan or scheme to evade the requirements of the Securities Act or the Exchange Act. See the definition of "affiliate" in Securities Act Rule 405 (17 CFR 230.405).

B. Transaction Requirements. If the registrant meets the Registrant Requirements specified in I.A. above, an offering meeting the following conditions may be registered on this Form:

1. Offerings for cash where the following have been satisfied:

(a) Risk Retention. With respect to each offering of securities that is registered on this form:

- The sponsor or an affiliate of the sponsor retains a net economic interest in the securities offered in one of two the allowed methods described in paragraph (B) and provides disclosure in the prospectus that is filed as part of this registration statement relating to the interest that is retained.
- The sponsor or affiliate of the sponsor shall retain the economic interest described in paragraph (A) above in one of the following methods:

(A) Retention of a minimum of five percent of nominal amount of each of the tranches sold or transferred to the investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate; or

(B) in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.

Instruction to General Instruction I.B.1(a)(i): Net economic interest is measured at issuance of the securities with respect to (A) and at origination of the assets backing the securities with respect to (B) and shall be maintained as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in the offering.

(b) Third Party Opinion Provision in Transaction Agreement. With respect to each offering of securities that is registered on this form, the pooling and servicing agreement or other transaction agreement, which shall be filed, contains a provision requiring any party that has provided representations and warranties relating to the pool assets and that is obligated to repurchase any noncompliant pool asset or substitute any noncompliant pool asset to furnish an opinion or certificate, furnished to the trustee at least each quarter, from a non-affiliated third party relating to any asset for which the trustee has asserted a breach of a representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset did not violate a representation or warranty contained in the pooling and servicing agreement or other transaction agreement.

(c) Certification. The registrant files a certification in accordance with Item 601(b)(36) of Regulation S–K (§ 229.601(b)(36)) signed by the chief executive officer of the depositor with respect to each offering of securities that is registered on this form.

(d) Undertaking to file Exchange Act Reports. With respect to each offering of securities that is registered on this form, the registrant undertakes to file reports as would be required by Sections 13(a) or 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section, in accordance with Item 512(a)(7)(ii) of Regulation S–K (§ 229.512(a)(7)(ii)) as long as non-affiliates of the depositor hold any of the issuer's securities that were sold in registered transactions. This registration statement shall also provide disclosure in the prospectus that is filed as part of the registration statement that the registrant has undertaken to, and will, file with the Commission reports as would be required by Sections 13(a) or 15(d) of the Exchange Act and the rules thereunder if the registrant were subject to the reporting requirements of that section.

(e) Delinquent Assets. Delinquent assets do not constitute 20% or more, as measured by dollar volume, of the asset pool as of the measurement date

(f) Residual Value for Certain Securities. With respect to securities that are backed by leases other than motor vehicle leases, the portion of the securitized pool balance attributable to the residual value of the physical property underlying the leases, as determined in accordance with the transaction agreements for the securities, does not constitute 20% or more, as measured by dollar volume, of the securitized pool balance as of the measurement date.

2. Securities relating to an offering of asset-backed securities registered in accordance with General Instruction I.B.1. where those securities represent an interest in or the right to the payments of cash flows of another asset pool and meet the requirements of Securities Act Rule 190(c)(1) through (4) (17 CFR 240.190(c)(1) through (4)).

II. Application of General Rules and Regulations

A. Attention is directed to the General Rules and Regulations under the Securities Act, particularly Regulation C thereunder (17 CFR 230.400 to 230.494). That Regulation contains general requirements regarding the preparation and filing of registration statements.

B. Attention is directed to Regulation S–K (17 CFR Part 229) for the requirements applicable to the content of the non-financial statement portions of registration statements under the Securities Act. Where this Form directs the registrant to furnish information required by Regulation S–K and the item of Regulation S–K so provides, information need only be furnished to the extent appropriate. Notwithstanding Items 501 and 502 of Regulation S–K, no table of contents is required to be included in the prospectus or registration statement prepared on this Form. In addition to the information expressly required to be included in a registration statement on this Form SF–3, registrants also may provide such other information as they deem appropriate.

C. Where securities are being registered on this Form, Rule 456(c) permits, but does not require, the registrant to pay the registration fee on a pay-as-you-go basis and Rule 457(s) permits, but does not require, the registration fee to be calculated on the basis of the aggregate offering price of the securities to be offered in an offering or offerings off the registration statement. If a registrant elects to pay all or a portion of the registration fee on a deferred basis, the Fee Table in the initial filing must identify the classes of

securities being registered and provide that the registrant elects to rely on Rule 456(c) and Rule 457(s), but the Fee Table does not need to specify any other information. When the registrant amends the Fee Table in accordance with Rule 456(c)(1)(ii), the amended Fee Table must include either the dollar amount of securities being registered if paid in advance of or in connection with an offering or offerings or the aggregate offering price for all classes of securities referenced in the offerings and the applicable registration fee.

D. Information is only required to be furnished as of the date of initial effectiveness of the registration statement to the extent required by Rule 430D. Required information about a specific transaction must be included in the prospectus in the registration statement by means of a prospectus that is deemed to be part of and included in the registration statement pursuant to Rule 430D, a post-effective amendment to the registration statement, or a periodic or current report under the Exchange Act incorporated by reference into the registration statement and the prospectus and identified in a prospectus filed, as required by Rule 430D, pursuant to Rule 424(h) or Rule 424(b) (§ 230.424(h) or § 230.424(b) of this chapter).

III. Registration of Additional Securities Pursuant to Rule 462(b)

With respect to the registration of additional securities for an offering pursuant to Rule 462(b) under the Securities Act, the registrant may file a registration statement consisting only of the following: The facing page; a statement that the contents of the earlier registration statement, identified by file number, are incorporated by reference; required opinions and consents; the signature page; and any price-related information omitted from the earlier registration statement in reliance on Rule 430A that the registrant chooses to include in the new registration statement. The information contained in such a Rule 462(b) registration statement shall be deemed to be a part of the earlier registration statement as of the date of effectiveness of the Rule 462(b) registration statement. Any opinion or consent required in the Rule 462(b) registration statement may be incorporated by reference from the earlier registration statement with respect to the offering, if: (i) Such opinion or consent expressly provides for such incorporation; and (ii) such opinion relates to the securities registered pursuant to Rule 462(b). See Rule 411(c) and Rule 439(b) under the Securities Act.

IV. Registration Statement Requirements

Include only one form of prospectus for the asset class that may be securitized in a takedown of asset-backed securities under the registration statement. A separate form of prospectus and registration statement must be presented for each country of origin or country of property securing pool assets that may be securitized in a discrete pool in a takedown of asset-backed securities. For both separate asset classes and jurisdictions of origin or property, a separate form of prospectus is not required for transactions that principally consist of a particular asset class or jurisdiction which also describe one or more potential additional asset classes or jurisdictions, so long as the pool assets for the additional classes or jurisdictions in the aggregate are below 10% of the pool, as measured by dollar volume, for any particular takedown.

PART I

INFORMATION REQUIRED IN PROSPECTUS

Item 1. Forepart of the Registration Statement and Outside Front Cover Pages of Prospectus.

Set forth in the forepart of the registration statement and on the outside front cover page of the prospectus the information required by Item 501 of Regulation S–K (17 CFR 229.501) and Item 1102 of Regulation AB (17 CFR 229.1102).

Item 2. Inside Front and Outside Back Cover Pages of Prospectus.

Set forth on the inside front cover page of the prospectus or, where permitted, on the outside back cover page, the information required by Item 502 of Regulation S–K (17 CFR 229.502).

Item 3. Transaction Summary and Risk Factors.

Furnish the information required by Item 503 of Regulation S–K (17 CFR 229.503) and Item 1103 of Regulation AB (17 CFR 229.1103).

Item 4. Use of Proceeds.

Furnish the information required by Item 504 of Regulation S–K (17 CFR 229.504).

Item 5. Plan of Distribution.

Furnish the information required by Item 508 of Regulation S–K (17 CFR 229.508).

Item 6. Information with Respect to the Transaction Parties.

Furnish the following information:

(a) Information required by Item 1104 of Regulation AB (17 CFR 229.1104), Sponsors;

(b) Information required by Item 1106 of Regulation AB (17 CFR 229.1106), Depositors;

(c) Information required by Item 1107 of Regulation AB (17 CFR 229.1107), Issuing entities;

(d) Information required by Item 1108 of Regulation AB (17 CFR 229.1108), Servicers;

(e) Information required by Item 1109 of Regulation AB (17 CFR 229.1109), Trustees;

(f) Information required by Item 1110 of Regulation AB (17 CFR 229.1110), Originators;

(g) Information required by Item 1112 of Regulation AB (17 CFR 229.1112), Significant Obligors;

(h) Information required by Item 1117 of Regulation AB (17 CFR 229.1117), Legal Proceedings; and

(i) Information required by Item 1119 of Regulation AB (17 CFR 229.1119), Affiliations and certain relationships and related transactions.

Item 8. Information with Respect to the Transaction.

Furnish the following information:

(a) Information required by Item 1111 of Regulation AB (17 CFR 229.1111), Pool Assets and Item 1111A of Regulation AB (17 CFR 229.1111A), Asset-level information, and Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools;

(b) Information required by Item 202 of Regulation S–K (17 CFR 229.202), Description of Securities Registered and Item 1113 of Regulation AB (17 CFR 229.1113), Structure of the Transaction;

(c) Information required by Item 1114 of Regulation AB (17 CFR 229.1114), Credit Enhancement and Other Support;

(d) Information required by Item 1115 of Regulation AB (17 CFR 229.1115), Certain Derivatives Instruments;

(e) Information required by Item 1116 of Regulation AB (17 CFR 229.1116), Tax Matters;

(f) Information required by Item 1118 of Regulation AB (17 CFR 229.1118), Reports and additional information; and

(g) Information required by Item 1120 of Regulation AB (17 CFR 229.1120), Ratings.

Instruction: All registrants are required to file the information required by Item 1111A of Regulation AB (17 CFR 229.1111A), Asset-level information; Item 1111B of Regulation AB (17 CFR 229.1111B), Grouped account data for credit card pools; and Item 1113(h) of Regulation AB (17 CFR 229.1113(h)), Waterfall Computer Program; as exhibits to Form 8–K (17 CFR 249.308) that are filed with the Commission pursuant to Item 6.06 and Item 6.07, respectively, of that form. Incorporation by reference must comply with Item 11 of this Form.

Item 9. Static Pool.

Furnish the information required by Item 1105 of Regulation AB (17 CFR 229.1105).

Instruction: Registrants may elect to file the information required by this item as an exhibit to Form 8–K (17 CFR 249.308) that is filed with the Commission pursuant to Item 6.08 of that form. Incorporation by reference must comply with Item 11 of this Form.

Item 10. Interests of Named Experts and Counsel.

Furnish the information required by Item 509 of Regulation S–K (17 CFR 229.509).

Item 11. Incorporation of Certain Information by Reference.

(a) The prospectus shall provide a statement that all current reports filed pursuant to Items 6.06, 6.07 and if applicable, 6.08 of Form 8–K pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

(b) If the registrant is structured as a revolving asset master trust, the documents listed in (1) and (2) below shall be specifically incorporated by reference into the prospectus by means of a statement to that effect in the prospectus listing all such documents:

(1) the registrant's latest annual report on Form 10–K (17 CFR 249.310) filed pursuant to Section 13(a) or 15(d) of the Exchange Act that contains financial statements for the registrant's latest fiscal year for which a Form 10–K was required to be filed; and

(2) all other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the annual report referred to in (1) above.

(c) The prospectus shall also provide a statement regarding the incorporation of reference of Exchange Act reports prior to the termination of the offering pursuant to one of the following two ways:

(1) a statement that all subsequently filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus; or

(2) a statement that all current reports on Form 8–K filed by the registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the termination of the offering shall be deemed to be incorporated by reference into the prospectus.

Instruction. Attention is directed to Rule 439 (17 CFR 230.439) regarding consent to use of material incorporated by reference.

(d)(1) You must state:

(i) that you will provide to each person, including any beneficial owner, to whom a prospectus is delivered, a copy of any or all of the information that has been incorporated by reference in the prospectus but not delivered with the prospectus;

(ii) that you will provide this information upon written or oral request;

(iii) that you will provide this information at no cost to the requester; and

(iv) the name, address, and telephone number to which the request for this information must be made.

Note to Item 11(c)(1). If you send any of the information that is incorporated by reference in the prospectus to security holders, you also must send any exhibits that are specifically incorporated by reference in that information.

(2) You must:

(i) identify the reports and other information that you file with the SEC; and

(ii) state that the public may read and copy any materials you file with the SEC at the SEC's Public Reference Room at 100 F Street, NE., Washington, DC 20549, between the hours of 10 a.m. and 3 p.m. State that the public may obtain information on the operation of the Public Reference Room by calling the SEC at 1–800–SEC–0330. If you are an electronic filer, state that the SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC and state the address of that site (*http://www.sec.gov*). You are encouraged to give your Internet address, if available.

Item 12. Disclosure of Commission Position on Indemnification for Securities Act Liabilities.

Furnish the information required by Item 510 of Regulation S–K (17 CFR 229.510).

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

Furnish the information required by Item 511 of Regulation S–K (17 CFR 229.511).

Item 14. Indemnification of Directors and Officers.

Furnish the information required by Item 702 of Regulation S–K (17 CFR 229.702).

Item 15. Exhibits.

Subject to the rules regarding incorporation by reference, file the exhibits required by Item 601 of Regulation S–K (17 CFR 229.601).

Item 16. Undertakings.

Furnish the undertakings required by Item 512 of Regulation S–K (17 CFR 229.512).

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form SF–3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of _____, State of _____, on _____, 20 _____.

_____

(Registrant)

By

_____

(Signature and Title)

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

_____

(Signature)

_____

(Title)

_____

(Date)

Instructions.

1. The registration statement shall be signed by the depositor, the depositor's principal executive officer or officers, its principal financial officer, its senior officer in charge of securitization and by at least a majority of its board of directors or persons performing similar functions. If the registrant is a foreign person, the registration statement shall also be signed by its authorized representative in the United States. Where the registrant is a limited partnership, the registration statement shall be signed by a majority of the board of directors of any corporate general partner signing the registration statement.

2. The name of each person who signs the registration statement shall be typed or printed beneath his signature. Any person who occupies more than one of the specified positions shall indicate each capacity in which he signs the registration statement. Attention is directed to Rule 402 concerning manual signatures and to Item 601 of Regulation S–K concerning signatures pursuant to powers of attorney.

60. Add § 239.144A to read as follows:

§ 239.144A Form 144A–SF, for notice of the initial placement of securities pursuant to § 230.144A of this chapter.

The notice shall be signed by the issuer of the securities and filed with the Commission no later than 15 calendar days after the first sale of securities in the initial placement of securities to be re-sold in reliance on Rule 144A (§ 230.144A), unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

61. Add Form 144A–SF (referenced in § 239.144A) to read as follows:

Note: The text of Form 144A–SF does not, and this amendment will not, appear in the Code of Federal Regulations.

U.S. Securities and Exchange Commission

Washington, DC 20549

FORM 144A–SF

NOTICE OF THE INITIAL PLACEMENT OF STRUCTURED FINANCE PRODUCTS PURSUANT TO RULE 144A UNDER THE SECURITIES ACT OF 1933

Note: *Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.*

General Instructions

In accordance with Rule 144A(d)(5), a notice of offering shall be filed for the initial placement of structured finance products, as defined in Rule 144A, to be sold in reliance on Rule 144A (17 CFR 230.144A). The notice shall be filed for the initial placement of the securities and not for subsequent resales of those securities. The notice shall be signed by the issuer of the securities and filed no later than 15 calendar days after the first sale of securities in the offering, unless the end of that period falls on a Saturday, Sunday or holiday, in which case the due date shall be the first business day following such period.

Item 1. Identity of principal parties.

(a) Identify the issuer and provide the principal place of business and contact information for the issuer.

(b) Identify the sponsor for the offering and principal originators for the assets in the underlying pool, and servicer or collateral manager.

(c) Provide the CUSIP number for the issuance, if reasonably available.

Item 2. Information on type of security.

(a) Describe the type of securities being offered or sold.

(b) Provide a brief description of the structure of the securities, including the number of tranches in the securitization and whether any portion of the tranches are being retained by the sponsor or originator.

(c) Provide a brief description of the asset pool, including the types of assets included, and if the assets are securities, provide the issuer of the underlying securities.

Item 3. Information on offering.

(a) Provide the principal amount of the securities offered or sold in the initial placement.

(b) Disclose the date of the initial placement and the date of the initial resale of securities to be made in reliance on Securities Act Rule 144A (17 CFR 230.144A).

Signature and Submission

Terms of Submission: In submitting this notice, the undersigned undertakes to provide to the SEC upon written request the offering documents used in connection with the initial placement of securities.

_____
Issuer

_____
Name of Signer

_____
Signature

_____
Title

_____
Date

62. Amend Form D (referenced in § 239.500) by:

a. Redesignating Item 9 as Item 4 and redesignating existing Items 4, 5, 6, 7, and 8, as Items 5, 6, 7, 8, and 9.

b. Revising newly redesignated Items 4 and 6;

c. Revising the instruction to Item 4;

d. Revising the instruction to Item 6; and

e. Replacing the reference to "Item 6" in the instruction to Item 13 to read "Item 7".

The revisions read as follows:

Note: The text of Form D (referenced in § 239.500) does not and this amendment will not appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM D

NOTICE OF EXEMPT OFFERING OF SECURITIES

* * * * *

1. Issuer's Identity

Name of Issuer _____

Previous Name(s) _____

Jurisdiction of Incorporation/Organization (*dropdown or other list selection feature*)

Entity Type (*dropdown or other list selection feature*)

Year of Incorporation/Organization (*dropdown or other list selection feature to select year or "Yet to Be Formed"*)

* * * * *

4. Securities Offered

Type(s) of Security (select all that apply)

[ ] Equity

[ ] Debt

[ ] Option, Warrant or Other Right to Acquire Another Security

[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security

[ ] Pooled Investment Fund Interests

[ ] Structured Finance Product

Check all that apply:

⊙ Interest-weighted

⊙ Principal-weighted

⊙ Interest Only

⊙ Principal Only

⊙ Planned Amortization

⊙ Companion Classes

⊙ Residual Interests

⊙ Subordinated Interests

⊙ Other [Specify: _____]

For issuers that specify "Structured Finance Products" in Item 4, also provide the following information:

Name of Sponsor _____

Name of Principal Originator(s) _____

Name of Servicer or Collateral Manager

CUSIP Number _____

[ ] Tenant-in-Common Securities

[ ] Mineral Property Securities

[ ] Other (Describe: _____)

6. Issuer Size or Other Characteristics

Revenue Range (for issuers that do not specify "Structured Finance Product" in response to Item 4 or "Hedge Fund" or "Other Investment Fund" in response to Item 5)

⊙ No Revenues

⊙ $1–$1,000,000

⊙ $1,000,001–$5,000,000

⊙ $5,000,001–$25,000,000

⊙ $25,000,001–$100,000,000

⊙ Over $100,000,000

⊙ Decline to Disclose

⊙ Not Applicable

Description of Transaction Structure and Asset Pool (for issuers that specify "Structured Finance Product" in response to Item 4)

Description of Transaction Structure: __

Description of Asset Pool: _____

Aggregate Net Asset Value Range (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 5)

⊙ No Aggregate Net Asset Value

⊙ $1–$5,000,000

⊙ $5,000,001–$25,000,000

⊙ $25,000,001–$50,000,000

⊙ $50,000,001–$100,000,000

⊙ Over $100,000,000

⊙ Decline to Disclose
⊙ Not Applicable

Instructions for Submitting Notice

* * * * *

Item-by-Item Instructions

* * * * *

4. Securities Offered. Select the appropriate type or types of securities offered as to which this notice is filed. If the securities are debt convertible into other securities, however, select "Debt" and any other appropriate types of securities except for "Equity." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories, except for the term "structured finance product," which is defined in Rule 501(a) of the Securities Act of 1933, 17 CFR 230.501(a). For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property. For issuers of structured finance products, identify the sponsor for the securities, the principal originators for the assets in the underlying pool, and the servicer or collateral manager and provide the CUSIP number for the securities.

* * * * *

6. Issuer Size or Other Characteristics.

• *Revenue Range* (for issuers that do not specify "Structured Finance Product" in response to Item 4 or "Hedge Fund" or "Other Investment Fund" in response to Item 5): Enter the revenue range of the issuer or of all the issuers together for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S–X under the Securities Exchange Act of 1934. Domestic non-reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. GAAP, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter "Decline to Disclose." If the issuer's(s') business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation only), enter "Not Applicable."

• *Description of Transaction Structure and Asset Pool* (for issuers that specify "Structured Finance Product" in response to Item 4): Provide a brief description of the structure of the securities offered, including the number of tranches in the securitization and whether any portion of the tranches are being retained by the sponsor or the originator. Provide a brief description of the asset pool, including the types of assets included, and if the assets are securities, provide the issuer of the underlying securities.

• *Aggregate Net Asset Value* (for issuers that specify "Hedge Fund" or "Other Investment Fund" in response to Item 5): Enter the aggregate net asset value range of the issuer or of all the issuers together as of the most recent practicable date. If the issuer(s) declines to disclose its aggregate net asset value range, enter "Decline to Disclose."

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

63. The authority citation for part 240 continues to read in part 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, 78o, 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.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

64. Amend § 240.15c2–8 by:

a. Revising the last sentence of paragraph (b); and

b. Removing paragraph (j).

The revision reads as follows:

§ 240.15c2–8 Delivery of prospectus.

* * * * *

(b) * * * Provided, however, this paragraph (b) shall apply to all issuances of asset-backed securities (as defined in § 229.1101 of this chapter) regardless of whether the issuer has previously been required to file reports pursuant to sections 13(a) or 15(d) of the Securities Exchange Act of 1934, or exempted from the requirement to file reports thereunder pursuant to section 12(h) of the Act.

* * * * *

§ 240.15d–22 [Amended]

65. Amend § 240.15d–22 in paragraphs (a) and (b) by revising the reference "415(a)(1)(x)" to read "415(a)(1)(vii)".

* * * * *

PART 243—REGULATION FD

66. The authority citation for part 243 continues to read as follows:

Authority: 15 U.S.C. 78c, 78i, 78j, 78m, 78o, 78w, 78mm, and 80a-29, unless otherwise noted.

§ 243.103 [Amended]

67. Amend § 243.103 in paragraph (a) by revising the phrase "and S–8 (17 CFR 239.16b)" to read ", S–8 (17 CFR 239.16b) and SF–3 (17 CFR 239.45)".

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

68. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.,* 7202, 7233, 7241, 7262, 7264, and 265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

69. Amend Form 8–K (referenced in § 249.308) by:

a. Adding a checkbox to the end of the cover page;

b. Revising General Instruction G.2.;

c. Revising Item 6.05 of the Form; and

d. Adding Items 6.06, 6.07, 6.08 and 6.09.

The revisions and additions read as follows:

Note: The text of Form 8–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 8–K

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

GENERAL INSTRUCTIONS

* * * * *

G. Use of this Form by Asset-Backed Issuers.

2. *Additional Disclosure for the Form 8–K Cover Page.* Immediately after the name of the issuing entity on the cover page of the Form 8–K, as separate line

items, identify the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

INFORMATION TO BE INCLUDED IN THE REPORT

* * * * *

Item 6.05. Securities Act Updating Disclosure.

Regarding an offering of asset-backed securities registered on Form SF–3 (17 CFR 239.45), if any material pool characteristic of the actual asset pool at the time of issuance of the asset-backed securities (other than as a result of the pool assets converting into cash in accordance with their terms) differs by 1% or more from the description of the asset pool in the prospectus filed for the offering pursuant to Securities Act Rule 424 (17 CFR 230.424), disclose the information required by Items 1111 and 1112 of Regulation AB (17 CFR 229.1111 and 17 CFR 229.1112) regarding the characteristics of the actual asset pool. If applicable, also provide information required by Items 1108 and 1110 of Regulation AB (17 CFR 229.1108 and 17 CFR 229.1110) regarding any new servicers or originators that would be required to be disclosed under those items regarding the pool assets. Describe the changes that were made to the asset pool, including the number of assets substituted or added to the asset pool.

Instruction

No report is required under this Item if substantially the same information is provided in a post-effective amendment to the Securities Act registration statement or in a subsequent prospectus filed pursuant to Securities Act Rule 424 (17 CFR 230.424).

Item 6.06. Asset-Level Data File and Related Documents.

(a) Regarding an offering of asset-backed securities registered on Form SF–1 (17 CFR 239.44) or Form SF–3 (17 CFR 239.45), disclose the information required by Item 1111(h) (17 CFR 229.1111(h)) and Schedule L (17 CFR 229.1111A) of Regulation AB or Item 1111(i) (17 CFR 229.1111(i)) and Schedule CC (17 CFR 229.1111B) of Regulation AB. The disclosure must be filed as an Asset Data File (as defined in 17 CFR 232.11) as an exhibit with this report by the time of effectiveness of a registration statement on Form SF–1, on the same date of the filing of a form of prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)), and a report filed in accordance with Item 6.05 of this Form.

(b) With respect to a credit card master trust, if a Waterfall Computer Program is filed pursuant to Item 6.07(b) of this Form as an exhibit with this report, also provide the information required by Schedule CC (17 CFR 229.1111B) of Regulation AB. The disclosure must be filed as an Asset Data File (as defined in 17 CFR 232.11) as an exhibit with this report.

(c) Asset Related Documents.

(1) If a registrant includes other data points in the Asset Data File provided in paragraph (a) of this Item, in addition to those required by Schedule L of Regulation AB (17 CFR 229.1111A), disclose in reasonable detail the definitions and formulas for each of those additional data points. The document must be filed as an exhibit with this report on the same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) and a report filed in accordance with Item 6.05 of this Form.

(2) If a registrant provides other explanatory disclosure regarding the Asset Data File filed pursuant to (a) of this paragraph, disclose in reasonable detail the additional information. The document must be filed as an exhibit with this report on the same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)), a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)) and a report filed in accordance with Item 6.05 of this Form.

Instructions.

1. Refer to Item 601(b)(102) and (103) of Regulation S–K (17 CFR 229.601(b)(102) and (103)) regarding the filing of exhibits to this Item 6.06.

2. Refer to Item 10 of Form SF–1 (17 CFR 239.44) or Item 11 of Form SF–3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.07. Waterfall Computer Program and Related Documents

(a) Regarding an offering of asset-backed securities registered on Form SF–1 (17 CFR 239.44) or Form SF–3 (17 CFR 239.45), disclose the information required by Item 1113(h) (17 CFR 229.1113(h)) of Regulation AB. The disclosure must be filed as a Waterfall Computer Program (as defined in 17 CFR 232.11) as an exhibit with this report by the time of effectiveness of a registration statement on Form SF–1, and on the filing date of any (i) form of prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)) or (ii) final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

(b) With respect to a credit card master trust, if there is a change to the flow of funds that results in a change to the waterfall, disclose the information required by Item 1113(h) of Regulation AB. The disclosure must be filed as a Waterfall Computer Program as an exhibit with this report. Also provide the Asset Data File required by Item 6.06(b) of this Form.

(c) *Waterfall Computer Program Related Documents.* If a registrant includes additional program functionality in the Waterfall Computer Program filed pursuant to (a) of this paragraph, identify and disclose in reasonable detail the additional program functionality. The document must be filed as an exhibit with this report on the same date of the filing of a prospectus filed in accordance with Rule 424(h) (17 CFR 230.424(h)) or a final prospectus meeting the requirements of section 10(a) of the Securities Act (15 U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(104) and (105) of Regulation S–K (17 CFR 229.601(b)(102) and (103)) regarding the filing of exhibits to this Item 6.07.

2. Refer to Item 10 of Form SF–1 (17 CFR 239.44) or Item 11 of Form SF–3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.08. Static Pool

Regarding an offering of asset-backed securities registered on Form SF–1 (17 CFR 239.44) or Form SF–3 (17 CFR 239.45), in lieu of providing the static pool information as required by Item 1105 of Regulation AB (17 CFR 229.1105) in a form of prospectus or prospectus, an issuer may file the required information as an exhibit to this report. The static pool disclosure must be filed as an exhibit with this report by the time of effectiveness of a registration statement on Form SF–1, on the same date of the filing of a form of prospectus, as required by Rule 424(h) (17 CFR 230.424(h)) and a final prospectus meeting the requirements of section 10(a) of the Securities Act (15

U.S.C. 77j(a)(a)) filed in accordance with Rule 424(b) (17 CFR 230.424(b)).

Instructions.

1. Refer to Item 601(b)(106) of Regulation S–K (17 CFR 229.601(b)(104)) regarding the filing of exhibits to this Item 6.08.

2. Refer to Item 10 of Form SF–1 (17 CFR 239.44) or Item 11 of Form SF–3 (17 CFR 239.45) regarding incorporation by reference.

Item 6.09. Change in Sponsor Interest in the Securities

If there is a material change in the sponsor's interest in the securities, explain the change, including the amount of change, and describe the sponsor's resulting interest in the transaction after the change.

* * * * *

70. Amend Form 10–K (referenced in § 249.310) by:

a. Adding a checkbox on the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed all reports * * *"; and

b. Revising General Instruction J(2)(a).

The addition and revision read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM 10–K

* * * * *

GENERAL INSTRUCTIONS

* * * * *

J. Use of this Form by Asset-Backed Issuers.

(2) * * *

(a) Immediately after the name of the issuing entity on the cover page of the Form 10–K, as separate line items, the exact name of the depositor as specified in its charter and the exact name of the sponsor as specified in its charter. Include a Central Index Key number for the depositor and the issuing entity, and if available, the sponsor.

* * * * *

FORM 10–K

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

* * * * *

71. Amend Form 10–D (referenced in § 249.312) by:

a. Revising General Instruction C(3);

b. Revising the beginning of the cover page above the line that reads "(State or other jurisdiction of incorporation or organization of the issuing entity)";

c. Adding a checkbox to the cover page before the paragraph that starts "Indicate by check mark whether the registrant (1) has filed * * *";

d. Revising Item 1 in Part I; and

e. Adding Item 1A in Part II

The revisions and additions read as follows:

Note: The text of Form 10–D does not, and this amendment will not, appear in the Code of Federal Regulations.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM 10–D

* * * * *

GENERAL INSTRUCTIONS

* * * * *

C. Preparation of Report. * * *

(3) Any item which is inapplicable or to which the answer is negative may be omitted and no reference need be made in the report. If substantially the same information has been previously reported by the asset-backed issuer, an additional report of the information on this Form need not be made. Identify the Form or report on which the previously reported information was filed. Identifying information should include a Central Index Key number, file number and date of the previously reported information. The term "previously reported" is defined in Rule 12b–2 (17 CFR 240.12b–2).

* * * * *

UNITED STATES SECURITIES AND EXCHANGE COMMISSION, Washington, DC 20549

FORM 10–D

ASSET-BACKED ISSUER DISTRIBUTION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the [identify distribution frequency (*e.g.,* monthly/quarterly)] distribution period from _____, 20____ to _____, 20____

Commission File Number of issuing entity: _____

Central Index Key Number of issuing entity: _____

_____

(Exact name of issuing entity as specified in its charter)

Commission File Number of depositor:

Central Index Key Number of depositor:

_____

(Exact name of depositor as specified in its charter)

Central Index Key Number of sponsor (if available): _____

_____

(Exact name of sponsor as specified in its charter)

_____

Name and telephone number, including area code, of the person to contact in connection with this filing

* * * * *

Indicate by check mark if the registrant is an asset-backed issuer that has undertaken to file this report pursuant to Item 512(a)(7)(ii) [ ]

* * * * *

PART I—DISTRIBUTION INFORMATION

Item 1. Distribution and Pool Performance Information.

Provide the information required by Item 1121(a) and (b) of Regulation AB (17 CFR 229.1121(a) and (b)), and attach as an exhibit to this report the distribution report delivered to the trustee or security holders, as the case may be, pursuant to the transaction agreements for the distribution period covered by this report. Any information required by Item 1121(a) and (b) of Regulation AB that is provided in the attached distribution report need not be repeated in this report. However, taken together, the attached distribution report and the information provided under this Item must contain the information required by Item 1121(a) and (b) of Regulation AB.

Item 1A. Asset Performance Information.

Provide the information required by Items 1121(d) and (e) of Regulation AB (17 CFR 229.1121(d) and (e)) as an exhibit.

* * * * *

Dated: April 7, 2010.

By the Commission.

Elizabeth M. Murphy,

Secretary.

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

Appendix

TABLE 1—SCHEDULE L ITEM 1. GENERAL ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(a)(1)	Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.	Text	General information about the asset.
Item 1(a)(2)	Asset number. Provide the unique ID number of the asset.	Number	General information about the asset.
Item 1(a)(3)	Asset group number. For structures with multiple collateral groups, indicate the collateral group number in which the asset falls.	Number	General information about the asset.
Item 1(a)(4)	Originator. Identify the name or MERS organization number of the originator entity. If the asset is a security, identify the name of the issuer.	Text or Number	General information about the asset.
Item 1(a)(5)	Origination date. Provide the date of asset origination. For revolving asset master trusts, provide the origination date of the receivable that will be added to the asset pool.	Month/Year	General information about the asset.
Item 1(a)(6)	Original asset amount. Indicate the dollar amount of the asset at the time of origination.	Number	General information about the asset.
Item 1(a)(7)	Original asset term. Indicate the initial number of months between asset origination and the asset maturity date.	Number	General information about the asset.
Item 1(a)(8)	Asset maturity date. Indicate the month and year in which the final payment on the asset is scheduled to be made.	Month/Year	General information about the asset.
Item 1(a)(9)	Original amortization term. Indicate the number of months in which the asset would be retired if the amortizing principal and interest payment were to be paid each month.	Number	General information about the asset.
Item 1(a)(10)	Original interest rate. Provide the rate of interest at the time of origination of the asset.	%	General information about the asset.
Item 1(a)(11)	Interest type. Indicate whether the interest rate calculation method is simple or actuarial.	1 = Simple 2 = Actuarial	General information about the asset.
Item 1(a)(12)	Amortization type. Indicate whether the interest rate on the asset is fixed or adjustable.	1 = Fixed 2 = Adjustable	General information about the asset.
Item 1(a)(13)	Original interest only term. Indicate the number of months in which the obligor is permitted to pay only interest on the asset.	Number	General information about the asset.
Item 1(a)(14)	First payment date. Provide the date of the first scheduled payment.	Date	General information about the asset.
Item 1(a)(15)	Primary servicer. Identify the name or MERS organization number of the entity that services or will have the right to service the asset.	Text or Number	General information about the asset.
Item 1(a)(16)	Servicing fee—percentage. If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the Original Contract Amount.	%	General information about the asset.
Item 1(a)(17)	Servicing fee—flat-dollar. If the servicing fee is based on a flat-dollar amount, indicate the monthly servicing fee paid to all servicers as a dollar amount.	Number	General information about the asset.

TABLE 1—SCHEDULE L ITEM 1. GENERAL ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(a)(18)	Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.	1 = Scheduled interest, scheduled principal; 2 = Actual interest, actual principal; 3 = Scheduled interest, actual principal; 98 = other 99 = unknown	General information about the asset.
Item 1(a)(19)	Defined underwriting indicator. Indicate yes or no whether the loan or asset made was an exception to a defined and/or standardized set of underwriting criteria.	1 = Yes 2 = No	General information about the asset.
Item 1(a)(20)	Measurement date. The date the loan or asset-level data is provided in accordance with Item 1111(h)(1) of Regulation AB (§ 229.1111(h)(1)).	Date	General information about the asset.
Item 1(b)(1)	Cut-off date. Indicate the date on and after which collections on the pool assets accrue for the benefit of the asset-backed security holders.	Date	General information about the asset.
Item 1(b)(2)	Current asset balance. Indicate the outstanding principal balance of the asset as of the cut-off date.	Number	Updating information about the asset as of the cut-off date.
Item 1(b)(3)	Current interest rate. Indicate the interest rate in effect on the asset as of the cut-off date.	%	Updating information about the asset as of the cut-off date.
Item 1(b)(4)	Current payment amount due. Indicate the next total payment due to be collected.	Number	Updating information about the asset as of the cut-off date.
Item 1(b)(5)	Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.	Number	Updating information about the asset as of the cut-off date.
Item 1(b)(6)	Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the cut-off date.	Number	Updating information about the asset as of the cut-off date.
Item 1(b)(7)	Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.	Number	Updating information about the asset as of the cut-off date.
Item 1(b)(8)	Remaining term to maturity. Indicate the number of months between the cut-off date and the asset maturity date.	Number	Updating information about the asset as of the cut-off date.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(1)	Loan purpose. Specify the code which describes the purpose of the loan.	1 = Cash out: Debt consolidation—Proceeds used to pay off existing loans other than loans secured by real estate. 2 = Cash out: Home improvement/renovation 3 = Cash out: Other/multi-purpose/unknown purpose 4 = Limited cash-out (GSE definition) 5 = Facilitate REO (repo financing for manufactured housing) 6 = First time home purchase, as defined by American Recovery and Reinvestment Act of 2009 (Purchaser has not owned a principal residence in the past three years.) 7 = Other-than-first-time home purchase	General information about the residential mortgage.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		8 = Rate/term refinance—lender initiated 9 = Rate/term refinance—borrower initiated 10 = Construction to permanent: A mortgage loan on completed construction under one mortgage or trust deed in which the completion certificate and the certificate of occupancy have been obtained. 11 = assumption 98 = other 99 = unknown	
Item 2(a)(2)	Lien position. Indicate the code that describes the lien position for the loan.	1 = First 2 = Second 3 = Third 98 = other 99 = unknown	General information about the residential mortgage.
Item 2(a)(3)	Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(4)	Negative amortization indicator. Indicate yes or no as to whether the loan allows negative amortization.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(5)	Mortgage modification indicator. Indicate yes or no as to whether the loan has been modified.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(6)	Mortgage insurance requirement indicator. Indicate yes or no as to whether mortgage insurance is or was required as a condition for originating the loan.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(7)	Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(8)	Cash out amount. Provide the amount of cash the obligor will receive at the closing of the loan on a refinance transaction.	Number	General information about the residential mortgage.
Item 2(a)(9)	Broker. Indicate yes or no as to whether a broker originated or was involved in the origination of the loan.	1 = Yes 2 = No	General information about the residential mortgage.
Item 2(a)(10)	Channel. Specify the code that describes the source from which the issuer obtained the loan.	1 = Retail 2 = Broker 3 = Correspondent bulk 4 = Correspondent flow with delegated underwriting 5 = Correspondent flow without delegated underwriting 98 = other 99 = unknown	General information about the residential mortgage.
Item 2(a)(11)	NMLS loan originator number. Specify the National Mortgage License System registration number of the loan originator.	Number	General information about the residential mortgage.
Item 2(a)(12)	NMLS company number. Specify the National Mortgage License System registration number of the company that originated the loan.	Number	General information about the residential mortgage.
Item 2(a)(13)	Buy down period. Indicate the total number of months during which any buy down is in effect, representing the accumulation of all buy down periods.	Number	General information about the residential mortgage.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(14)	Interest paid through date. Provide the date through which interest is paid with the current payment, which is the effective date from which interest will be calculated for the application of the next payment.	Date	General information about the residential mortgage.
Item 2(a)(15)	Loan delinquency advance days count. Indicate the number of days after which a servicer can stop advancing funds on a delinquent loan.	Number	General information about the residential mortgage.
Item 2(a)(16)	Junior mortgage balance. For first mortgages with subordinate liens at the time of origination, provide the amount of the combined balance of the subordinate liens.	Number	General information about the residential mortgage.
Item 2(a)(17)(i)	Senior loan amount(s). For non-first mortgages, provide the total amount of the balances of all associated senior mortgages at the time of origination of the subordinate lien.	Number	Information about junior liens.
Item 2(a)(17)(ii)	Loan type of most senior lien. For non-first mortgages, indicate the code that describes the loan type of the first mortgage.	Number	Information about junior liens.
Item 2(a)(17)(iii)	Hybrid period of most senior lien. For non-first mortgages where the associated first mortgage is a hybrid ARM, provide the number of months remaining in the initial fixed interest rate period for the first mortgage.	Number	Information about junior liens.
Item 2(a)(17)(iv)	Negative amortization limit of most senior lien. For non-first mortgages where the associated first mortgage features negative amortization, indicate the negative amortization limit of the mortgage as a percentage of the original unpaid principal balance.	%	Information about junior liens.
Item 2(a)(17)(v)	Origination date of most senior lien. For non-first mortgages, provide the origination date of the associated first mortgage.	Month/Year	Information about junior liens.
Item 2(a)(18)(i)	ARM Index. Specify the code that describes the index on which an adjustable interest rate is based.	1 = 1 MONTH TREASURY (WEEKLY). 2 = 1 Year CMT Moving 12 Month Avg (MTA) 3 = 1 YEAR TREASURY (WEEKLY) 4 = 1 YR TREASURY (MONTHLY) 5 = 10 YEAR TREASURY (MONTHLY) 6 = 10 YEAR TREASURY (WEEKLY) 7 = 11TH DISTRICT COFI (MONTHLY) 8 = 11TH DISTRICT COFI (SEMI-ANNUAL) 9 = 2 YR TREASURY (MONTHLY) 10 = 2 YR TREASURY (WEEKLY) 11 = 3 MONTH TREASURY (MONTHLY) 12 = 3 MONTH TREASURY (WEEKLY) 13 = 3 MTH T-BILL AUCTION AVGDISCOUNT RATE (WEEKLY) 14 = 3 MTH TREASURY AUCTION AVG INVESTMENT (WEEKLY) 15 = 3 YEAR TREASURY (WEEKLY) 16 = 3 YR TREASURY (MONTHLY)	ARM Loans.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		17 = 5 YR TREASURY (MONTHLY) 18 = 5 YR TREASURY (WEEKLY) 19 = 6 MONTH US TREASURY (MONTHLY) 20 = 6 MONTH US TREASURY (WEEKLY) 21 = 6 MTH T-BILL AUCTION AVGDISCOUNT RATE (WEEKLY) 22 = 6 MTH TREASURY AUCTION AVG INVESTMENT (WEEKLY) 23 = 7 YEAR TREASURY (WEEKLY) 24 = CDs (secondary market) 6-month (weekly) 25 = FEDERAL RESERVE "PRIME RATE" (MONTHLY) 26 = FHLB Contract Mortgage Rate Prev.Occupied 27 = FHLBB CONTRACT (MONTHLY) 28 = FHLBB EFFECTIVE RATE (MONTHLY) 29 = FHLBB MONTHLY NATIONAL AVG MEDIAN COFI (MONTHLY) 30 = FHLBB NATIONAL COFI QUARTERLY AVG 31 = FNMA 6 MONTH TREASURY (WEEKLY) 32 = FSLIC MONTHLY NATIONAL AVG MEDIAN COFI (MONTHLY) 33 = WSJ "PRIME RATE" (DAILY) 34 = WSJ "PRIME RATE" (First Bus. Day) 35 = WSJ 1 MONTH LIBOR (DAILY) 36 = WSJ 1 MONTH LIBOR (First Business Day) 37 = WSJ 1 MONTH LIBOR FIRST DAY OF THE MONTH 38 = WSJ 1 MONTH LIBOR (on or after 25th) 39 = WSJ 1 YEAR LIBOR (DAILY) 40 = WSJ 1 YEAR LIBOR (First Business Day) 41 = WSJ 3 MONTH LIBOR (DAILY) 42 = WSJ 3 MONTH LIBOR (First Business Day) 43 = WSJ 6 MONTH LIBOR (DAILY) 44 = WSJ 6 MONTH LIBOR/30 L–B–DAYS (Monthly) 45 = WSJ 6 month Libor WSJ–15th day 46 = WSJ 6 MONTH LIBOR/Pub on 25th (Monthly) 47 = WSJ 6-MONTH LIBOR (First Business Day) 48 = 3-Year CMT 49 = 5-Year CMT 50 = 7-Year CMT 98 = Other 99 = Unavailable	
Item 2(a)(18)(ii)	ARM Margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.	%	ARM Loans.
Item 2(a)(18)(iii)	Fully indexed interest rate. Indicate the fully indexed interest rate	%	ARM Loans.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(18)(iv)	Initial fixed rate period for hybrid ARM. If the interest rate is initially fixed for a period of time, indicate the number of months between the first payment date of the mortgage and the first interest rate adjustment date.	Number	ARM Loans.
Item 2(a)(18)(v)	Initial interest rate decrease. Indicate the maximum percentage by which the mortgage note rate may decrease at the first interest rate adjustment date.	%	ARM Loans.
Item 2(a)(18)(vi)	Initial interest rate increase. Indicate the maximum percentage by which the mortgage note rate may increase at the first interest rate adjustment date.	%	ARM Loans.
Item 2(a)(18)(vii)	Index lookback. Provide the number of days prior to an interest rate effective date used to determine the appropriate index rate.	Number	ARM Loans.
Item 2(a)(18)(viii)	Subsequent interest rate reset period. Indicate the number of months between subsequent rate adjustments.	Number	ARM Loans.
Item 2(a)(18)(ix)	Lifetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.	%	ARM Loans.
Item 2(a)(18)(x)	Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.	%	ARM Loans.
Item 2(a)(18)(xi)	Next adjustment date. Provide the next scheduled date on which the mortgage note rate adjusts.	Date	ARM Loans.
Item 2(a)(18)(xii)	Subsequent interest rate decrease. Provide the maximum percentage by which the interest rate may decrease at each rate adjustment date after initial adjustment.	%	ARM Loans.
Item 2(a)(18)(xiii)	Subsequent interest rate increase. Provide the maximum percentage by which the interest rate may increase at each rate adjustment date after the initial adjustment.	%	ARM Loans.
Item 2(a)(18)(xiv)	Subsequent payment reset period. Indicate the number of months between payment adjustments after the first interest rate adjustment date.	Number	ARM Loans.
Item 2(a)(18)(xv)	ARM round indicator. Indicate the code that describes whether an adjusted interest rate is rounded to the next higher adjustable rate mortgage round factor, to the next lower round factor, or to the nearest round factor.	0 = No Rounding 1 = Up 2 = Down 3 = Nearest 99 = unknown	ARM Loans.
Item 2(a)(18)(xvi)	ARM round percentage. Indicate the percentage to which an adjusted interest rate is to be rounded.	%	ARM Loans.
Item 2(a)(18)(xvii)	Option ARM indicator. Indicate yes or no as to whether the loan is an option ARM.	1 = Yes 2 = No	ARM Loans.
Item 2(a)(18)(xviii)	Payment method after recast. Specify the code that describes the means of computing the lowest monthly payment available to the obligor after recast.	1 = Fully amortizing 30 year 2 = Fully amortizing 15 year 3 = Fully amortizing 40 year 4 = Interest-Only 5 = Minimum Payment 6 = unknown	ARM Loans.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(18)(xix)	Initial minimum payment. Provide the amount of the initial minimum payment the obligor is permitted to make.	Number	ARM Loans.
Item 2(a)(18)(xx)	Convertible indicator. Indicate yes or no as to whether the obligor of the loan has an option to convert an adjustable interest rate to a fixed interest rate during a specified conversion window.	1 = Yes 2 = No	ARM Loans.
Item 2(a)(18)(xxi)	HELOC indicator. Indicate yes or no as to whether the loan is a home equity line of credit (HELOC).	1 = Yes 2 = No	ARM Loans.
Item 2(a)(18)(xxii)	HELOC draw period. Indicate the original maximum number of months during which the obligor may draw funds against the HELOC account.	Number	ARM Loans.
Item 2(a)(19)(i)	Prepayment penalty calculation. Specify the code that describes the method for calculating the prepayment penalty for the loan.	1 = Lesser of 2% or 60 days interest 2 = Lesser of 1% or 2 months interest 3 =Lesser of 1% or 3 months interest or remaining bal of 1st yr interest 4 = Lesser of 1% or remaining bal of 1st yr Interest 5 = Lesser of 3 mo interest or remaining bal of 1st yr interest 6 = Lesser of 1% or 6 months interest 7 = Lesser of 2% or 6 months interest 8 = Lesser of 3% or 6 months interest 9 = Greater of 1% or $100 10 = 60 days interest 11 = 1 months interest 12 = 2 months interest 13 = 3 months interest 14 = 5 months interest 15 = 6 months interest 16 = 12 months interest 17 = 24 months interest 18 = 36 months interest 19 = 60 months interest 20 = 1% 21 = 2% 22 = 3% 23 = 4% 24 = 5% 25 = 6% 26 = 1%, 1% 27 = 2%, 1% 28 = 2%, 2% 29 = 3%, 1% 30 = 3%, 2% 31 = 3%, 3% 32 = 4%, 3% 33 = 5%, 1% 34 = 5%, 2% 35 = 5%, 4% 36 = 5%, 5% 37 = 6%, 1% 38 = 1%, 1%, 1% 39 = 1%, 2%, 3% 40 = 2%, 2%, 2% 41 = 3%, 2%, 1% 42 = 3%, 3%, 1% 43 = 3%, 3%, 3% 44 = 5%, 3%, 1% 45 = 5%, 4%, 1% 46 = 5%, 4%, 3% 47 = 5%, 5%, 5% 48 = 4%, 3%, 2%, 1% 49 = 5%, 4%, 3%, 2% 50 = 5%, 4%, 3%, 2%, 1% 51 = 5%, 5%, 5%, 5%, 5%	Prepayment Penalties.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		52 = 10%, 7%, 3.5% 53 = 1%, 1%, 1%, 1%, 1% 54 = 2%, 2%, 2%, 2%, 2% 55 = 3%, 3%, 3%, 3%, 3% 56 = 3%, 2%, 1% or 6 months interest 98 = Other 99 = Unavailable	
Item 2(a)(19)(ii)	Prepayment penalty type. Specify the code that describes the type of prepayment penalty.	1 = Hard: The prepayment penalty is incurred regardless of the reason the loan is prepaid in full.. 2 = Soft: The prepayment penalty is incurred only if the loan is prepaid in full due to a refinancing. 3 = Hybrid: The prepayment penalty can be characterized as hard for a certain amount of time and as soft during another period. 99 = unknown	Prepayment Penalties.
Item 2(a)(19)(iii)	Prepayment penalty total term. Provide the total number of months that the prepayment penalty may be in effect.	Number	Prepayment Penalties.
Item 2(a)(20)(i)	Negative amortization limit. Specify the maximum dollar amount of negative amortization that is allowed before it is required to recalculate the fully amortizing payment based on the new loan balance.	Number	Negative Amortization.
Item 2(a)(20)(ii)	Initial negative amortization recast Period. Indicate the number of months in which negative amortization is allowed	Number	Negative Amortization.
Item 2(a)(20)(iii)	Subsequent negative amortization recast period. Indicate the number of months after which the payment is required to recast after the first recast period.	Number	Negative Amortization.
Item 2(a)(20)(iv)	Current negative amortization balance amount. Provide the amount of the current negative amortization balance accumulated.	Number	Negative Amortization.
Item 2(a)(20)(v)	Initial fixed payment period. Indicate the number of months after the origination of the loan during which the payment is fixed.	Number	Negative Amortization.
Item 2(a)(20)(vi)	Initial periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in the first period.	%	Negative Amortization.
Item 2(a)(20)(vii)	Subsequent periodic payment cap. Indicate the maximum percentage by which a payment can change (increase or decrease) in one period after the initial cap.	%	Negative Amortization.
Item 2(a)(20)(viii)	Initial minimum payment reset period. Provide the maximum number of months an obligor can initially pay the minimum payment before a new minimum payment is determined.	Number	Negative Amortization.
Item 2(a)(20)(ix)	Subsequent minimum payment reset Period. Provide the maximum number of months an obligor can pay the minimum payment before a new minimum payment is determined after the initial period.	Number	Negative Amortization.
Item 2(a)(20)(x)	Current minimum payment. Provide the amount of current minimum payment.	Number	Negative Amortization.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(21)(i)	Number of modifications. Provide the number of times that the loan has been modified.	Number	Modification.
Item 2(a)(21)(ii)	Loan modification event type. Specify the code that describes the type of action that has modified the loan terms	1 = Capitalization-Fees or interest have been capitalized into the unpaid principal balance.. 2 = Change of Payment Frequency 3 = Construction to permanent 4 = Other	Modification.
Item 2(a)(21)(iii)	Loan modification effective date. Provide the date on which the modification of the loan has gone into effect.	Month/Year	Modification.
Item 2(a)(21)(iv)	Updated DTI (front-end). Provide the updated front-end DTI ratio, calculated by dividing the total monthly housing expense by total monthly income.	%	Modification.
Item 2(a)(21)(v)	Updated DTI (back-end). Provide the updated back-end DTI ratio, calculated by dividing the total monthly debt expense by the total monthly income.	%	Modification.
Item 2(a)(21)(vi)	Modification effective payment date. Indicate the date of the first payment due after the loan modification.	Date	Modification.
Item 2(a)(21)(vii)	Total capitalized amount. Provide the amount added to the principal balance of a loan due to the modification.	Number	Modification.
Item 2(a)(21)(viii)	Total deferred amount. Provide the deferred amount that is non-interest bearing.	Number	Modification.
Item 2(a)(21)(ix)	Pre-Modification Interest Rate. Provide the most recent scheduled interest rate preceding the Modification Effective Payment Date.	%	Modification.
Item 2(a)(21)(x)	Pre-modification principal and interest payment. Provide the most recent scheduled total principal and interest payment amount preceding the modification effective payment date.	Number	Modification.
Item 2(a)(21)(xi)	Forgiven Principal Amount. Provide the total amount of all principal balance reductions as a result of loan modification over the life of the loan.	Number	Modification.
Item 2(a)(21)(xii)	Forgiven interest amount. Provide the total amount of all interest forgiven as a result of loan modification over the life of the loan.	Number	Modification.
Item 2(b)(1)	Geographic Location. Specify the location of the property by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number **Note:** The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09–01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the property.
Item 2(b)(2)	Occupancy status. Specify the code that describes the property occupancy status.	1 = owner-occupied 2 = second home 3 = investment property 98 = other 99 = unavailable	General information about the property.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(b)(3)	Sales price. Provide the negotiated price of a given property between the buyer and seller.	Number	General information about the property.
Item 2(b)(4)	Property type. Specify the code that describes the type of property that secures the loan.	1 = Single family detached (non-PUD) 2 = Co-op 3 = Condo, low rise (4 or fewer stories) 4 = Condo, high rise (5+ stories) 5 = Condotel (as defined in Issuer's Underwriting Guidelines) 6 = dPUD (PUD with "de minimus" monthly HOA dues 7 = PUD (Only for use with Single-Family Detached Homes with PUD riders) 8 = Townhouse (Do not report as "PUD") 9 = Single-wide manufactured housing 10 = Double-wide manufactured housing 11 = Multi-wide manufactured housing 12 = 1 family attached 13 = 2 family 14 = 3 family 15 = 4 family 98 = other 99 = unavailable	General information about the property.
Item 2(b)(5)	Original appraised property value. Provide the appraised value amount of the property used to approve the loan.	Number	General information about the property.
Item 2(b)(6)	Original property valuation type. Specify the code that describes the method by which the property value was reported at the time of underwriting.	1 = Tax Assessment 2 = Drive-By Form 704 3 = URAR Form 1004, Form 70, Form 72, Form 1025, Form 1073, Form 465, Form 2090, Form 1004C, and Form, 70B (Form 1075 retired 11/1/2005) 4 = Form 2070 and Form 2075 (Form 2065 retired 11/1/2005) 5 = Form 2055, Form 1075, Form 466, and Form 2095 (Exterior Only) 6 = Form 2055 (with Interior Inspection) 7 = Automated Valuation Model (also indicate system code in field 127) 8 = No Appraisal/Stated Value 9 = Desk Review 10 = BPO as-is 11 = BPO quick sale 12 = NADA/Yellow Book Value (for MH) 13 = Land only (for Lot and MH) 14 = Hold for other types of MH valuations 15 = Case-Shiller/other index application 16 = Form 1004MC 98 = other 99 = unavailable	General information about the property.
Item 2(b)(7)	Original property valuation date. Specify the date on which the original property value was reported.	Date	General information about the property.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(b)(8)	Original automated valuation model (AVM) model name. Provide the code that indicates the name of the AVM model if an AVM was used to determine the original property valuation.	0 = No AVM Used 1 = HPA (FACL) 2 = VP4 (FACL) 3 = PASS (FACL) 4 = PowerBase 6.0 (FACL) 5 = HVE (Freddie Mac) 6 = CASA (Fiserv) 7 = APS (Fannie Mae) 8 = iAVM (IntelliReal) 9 = ValueFinder (LandSafe) 10 = ValueSure (LPS) 11 = SiteX Value (LPS) 12 = CMV (MDAS) 13 = ValueSmart (MDAS) 14 = Real Assessment (Real Info) 15 = i-Val (Real Info) 16 = GeoCompVal (Real Info) 17 = AVMax (RJ Peters) 18 = VeroValue Preferred (Veros) 19 = VeroValue (Veros) 20 = VeroValue Advantage (Veros) 21 = Other	General information about the property.
Item 2(b)(9)	Original AVM confidence score. Provide the confidence score presented on the AVM report of the original property value	Number	General information about the property.
Item 2(b)(10)	Most recent property value. If an additional property valuation was obtained after the original appraised property value, provide the most recent property value.	Number	General information about the property.
Item 2(b)(11)	Most recent property valuation type. Specify the code that describes the method by which the most recent property value was reported.	1 = Tax Assessment 2 = Drive-By Form 704 3 = URAR Form 1004, Form 70, Form 72, Form 1025, Form 1073, Form 465, Form 2090, Form 1004C, and Form 70B (Form 1075 retired 11/1/2005) 4 = Form 2070 and Form 2075 (Form 2065 retired 11/1/2005) 5 = Form 2055, Form 1075, Form 466, and Form 2095 (Exterior Only) 6 = Form 2055 (with Interior Inspection) 7 = Automated Valuation Model (also indicate system code in field 127) 8 = No Appraisal/Stated Value 9 = Desk Review 10 = BPO as-is 11 = BPO quick sale 12 = NADA/Yellow Book Value (for MH) 13 = Land Only (for Lot and MH) 14 = Hold for other types of MH valuations 15 = Case-Shiller/other index application 16 = Form 1004MC 98 = other 99 = unavailable	General information about the property.
Item 2(b)(12)	Most recent property valuation date. Specify the date on which the Most Recent Property Value was reported	Date	General information about the property.
Item 2(b)(13)	Most recent AVM model name. Provide the code indicating the name of the AVM model if an AVM was used to determine the most recent property value.	0 = No AVM Used 1 = HPA (FACL) 2 = VP4 (FACL) 3 = PASS (FACL) 4 = PowerBase 6.0 (FACL) 5 = HVE (Freddie Mac) 6 = CASA (Fiserv)	General information about the property.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		7 = APS (Fannie Mae) 8 = iAVM (IntelliReal) 9 = ValueFinder (LandSafe) 10 = ValueSure (LPS) 11 = SiteX Value (LPS) 12 = CMV (MDAS) 13 = ValueSmart (MDAS) 14 = Real Assessment (Real Info) 15 = i-Val (Real Info) 16 = GeoCompVal (Real Info) 17 = AVMax (RJ Peters) 18 = VeroValue Preferred (Veros) 19 = VeroValue (Veros) 20 = VeroValue Advantage (Veros) 21 = Other	
Item 2(b)(14)	Most recent AVM confidence score. Provide the confidence score presented on the AVM report of the most recent property value.	Number	General information about the property.
Item 2(b)(15)	Original combined loan-to-value (CLTV). Provide the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.	%	General information about the property.
Item 2(b)(16)	Original loan-to-value (LTV). Provide the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.	%	General information about the property.
Item 2(b)(17)	LTV calculation date. Provide the date on which the LTV was calculated.	Date	General information about the property.
Item 2(b)(18)	Original Pledged Assets. If the obligor pledged financial assets to the lender instead of making a down payment, provide the total value of assets pledged as collateral for the loan at the time of origination.	Number	General information about the property.
Item 2(b)(19)(i)	Real estate interest. Indicate the code that describes the real estate interest of the property on which the manufactured home is situated	1 = Owned 2 = Short-term lease 3 = Long-term lease 99 = unavailable	Manufactured Homes.
Item 2(b)(19)(ii)	Community ownership structure. If the manufactured home is situated in a community, specify the code that describes the ownership of the community.	1 = Public institutional 2 = Public non-institutional 3 = Private institutional 4 = Private non-institutional 5 = HOA-owned 6 = Non-community 99 = unavailable	Manufactured Homes.
Item 2(b)(19)(iii)	Year of manufacture. Indicate the year in which the home was manufactured.	Year	Manufactured Homes.
Item 2(b)(19)(iv)	HUD code compliance indicator. Indicate yes or no as to whether the home was constructed in accordance with the 1976 HUD code.	1 = Yes 2 = No 99 = unavailable	Manufactured Homes.
Item 2(b)(19)(v)	Gross manufacturer's invoice price. Provide the total amount that appears on the manufacturer's invoice of the home.	Number	Manufactured Homes.
Item 2(b)(19)(vi)	LTI (loan-to-invoice) gross. Provide the ratio of the loan amount divided by the gross manufacturer's invoice price.	%	Manufactured Homes.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(b)(19)(vii)	Net manufacturer's invoice price. Provide the amount of the gross manufacturer's invoice price minus intangible costs, including: Transportation, association, on-site setup, service, and warranty costs, taxes, dealer incentives, and other fees.	Number	Manufactured Homes.
Item 2(b)(19)(viii)	LTI (Net). Provide the ratio of the loan amount divided by the net manufacturer's invoice price.	%	Manufactured Homes.
Item 2(b)(19)(ix)	Manufacturer name. Provide the name of the manufacturer of the subject property.	Text	Manufactured Homes.
Item 2(b)(19)(x)	Model name. Provide the model name of the subject property.	Text	Manufactured Homes.
Item 2(b)(19)(xi)	Down payment source. Indicate the code that describes the source of the down payment.	1 = Cash 2 = Proceeds from trade in 3 = Land in lieu 98 = Other 99 = unavailable	Manufactured Homes.
Item 2(b)(19)(xii)	Community/related party lender indicator. Indicate the code describing whether the loan was made by the community owner, an affiliate of the community owner or the owner of the real estate upon which the collateral is located	1 = Yes 2 = No 99 = unknown	Manufactured Homes.
Item 2(b)(19)(xiii)	Chattel indicator. Specify the code indicating whether the secured property is classified as chattel or real estate.	1 = real estate 2 = chattel	Manufactured Homes.
Item 2(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor.
Item 2(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 2(c)(3).	Text or Number	General information about the obligor.
Item 2(c)(3)	Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.
Item 2(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Text	General information about the obligor.
Item 2(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 2(c)(6).	Text or Number	General information about the obligor.
Item 2(c)(6)	Co-obligor FICO Score. Provide the standardized FICO credit score of the co-obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.
Item 2(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1 = Not Stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified	General information about the obligor.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	
Item 2(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor.
Item 2(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor.
Item 2(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor.
Item 2(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 2(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 2(c)(13)	Liquid/cash reserves. Provide the dollar amount of remaining verified liquid assets after the close of the mortgage.	Number	General information about the obligor.
Item 2(c)(14)	Number of mortgaged properties. Provide the number of properties owned by the obligor that currently secure mortgage loans.	Number	General information about the obligor.
Item 2(c)(15)	Monthly debt. Provide the dollar amount of the aggregate monthly payment due on other debt of the obligor.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499	General information about the obligor.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	
Item 2(c)(16)	Originator DTI. Provide the total debt to income ratio used by the originator to qualify the loan.	%	General information about the obligor.
Item 2(c)(17)	Qualification method. Specify the code that describes type of mortgage payment used to qualify the obligor for the loan.	1 = start rate 2 = first year cap rate 3 = interest only amount 4 = fully indexed 5 = minimum payment 98 = other 99 = unknown	General information about the obligor.
Item 2(c)(18)	Percentage of down payment from obligor own funds. Provide the percentage of down payment from obligor own funds other than any gift or borrowed funds.	%	General information about the obligor.
Item 2(c)(19)	Number of obligors. Indicate the number of obligors who are obligated to repay the mortgage note.	Number	General information about the obligor.
Item 2(c)(20)	Self-employment flag. Indicate whether the obligor is self-employed.	1 = Yes 2 = No	General information about the obligor.
Item 2(c)(21)	Current other monthly payment. Provide the total amount per month of all payments pertaining to the subject property other than principal and interest.	Number	General information about the obligor.
Item 2(c)(22)	Length of employment: Obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	General information about the obligor.
Item 2(c)(23)	Length of employment: Co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	General information about the obligor.
Item 2(c)(24)	Months bankruptcy. Provide the number of months since any obligor was discharged from bankruptcy.	Number	General information about the obligor.
Item 2(c)(25)	Months foreclosure. If the obligor has directly or indirectly been obligated on any loan that resulted in foreclosure, provide the number of months since the foreclosure date.	Number	General information about the obligor.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(c)(26)	Obligor wage income. Provide the code that base describes the dollar amount per month of income associated with the obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 2(c)(27)	Co-obligor wage income. Provide the code that base describes the dollar amount per month of income associated with the co-obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 2(c)(28)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 2(c)(29)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499	General information about the obligor.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	
Item 2(c)(30)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 2(c)(31)	All obligor total income. Provide the monthly income of all obligors.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 2(d)(1)	Mortgage insurance company name. Provide the name of the entity providing mortgage insurance for the loan.	Text	Mortgage Insurance.
Item 2(d)(2)	Mortgage insurance coverage. Indicate the percentage of mortgage insurance coverage obtained.	%	Mortgage Insurance.
Item 2(d)(3)	Mortgage insurance obtainer. Specify the code that describes the party that paid for the mortgage insurance: the obligor, the lender, or others.	1 = Borrower paid 2 = Lender paid 99 = unknown	Mortgage Insurance.

TABLE 2—SCHEDULE L ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(d)(4)	Pool insurance company. Provide the name of the pool insurance provider.	Text	Mortgage Insurance.
Item 2(d)(5)	Pool insurance stop loss percent. Provide the aggregate amount that the pool insurance company will pay, calculated as a percentage of the pool balance.	Number	Mortgage Insurance.
Item 2(d)(6)	Mortgage insurance certificate number. Provide the number assigned to the individual loan by the mortgage insurance company.	Number	Mortgage Insurance.
Item 2(d)(7)	Mortgage insurance coverage plan type. Specify the code that describes coverage category of mortgage insurance applicable to the loan.	1 = Loss limit cap 2 = Pool 3 = Risk sharing 4 = Second layer 5 = Standard primary	Mortgage Insurance.

TABLE 1—SCHEDULE L ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(a)(1)	Lien position. Indicate the code that describes the lien position for the loan.	1 = 1 2 = 2 3 = 3 98 = other 99 = unknown	General information about the commercial mortgage.
Item 3(a)(2)	Loan structure. Indicate the code that describes the type of loan structure including the seniority of participated mortgage loan components. The code relates to loan within securitization.	1 = Whole loan structure 2 = Participated mortgage loan with pari passu debt outside trust 3 = A Note; A/B Participation Structure 4 = B Note; A/B Participation Structure 5 = A Note; A/B/C Participation Structure 6 = B Note; A/B/C Participation Structure 7 = C Note; A/B/C Participation Structure 8 = Mezzanine Financing	General information about the commercial mortgage.
Item 3(a)(3)	Current remaining term. Provide the number of months until the earlier of the scheduled loan maturity or the current hyperamortizing date.	Number	General information about the commercial mortgage.
Item 3(a)(4)	Payment type. Indicate the code that describes the type or method of payment for a loan.	1 = fully amortizing 2 = amortizing balloon 3 = interest only/balloon 4 = interest only/amortizing 5 = interest only/amortizing/balloon 6 = principal only 7 = hyper—amortization 98 = other	General information about the commercial mortgage.
Item 3(a)(5)	Periodic principal and interest payment. Provide the total amount of principal and interest due on the loan in effect as of the closing date of transaction.	%	General information about the commercial mortgage.
Item 3(a)(6)	Payment frequency. Indicate the code that describes the frequency mortgage loan payments are required to be made.	1 = monthly 2 = quarterly 3 = semi-annually 4 = annually 5 = daily	General information about the commercial mortgage.
Item 3(a)(7)	Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General information about the commercial mortgage.

TABLE 1—SCHEDULE L ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(a)(8)	Grace days allowed. Provide the number of days after a mortgage payment is due in which the lender will not require a late payment charge in accordance with the loan documents. Does not include penalties associated with default interest.	Number	General information about the commercial mortgage.
Item 3(a)(9)	Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.	Date	General information about the commercial mortgage.
Item 3(a)(10)	Interest only indicator. Indicate yes or no as to whether or not this is a loan for which scheduled interest only is payable, whether for a temporary basis or until the full loan balance is due.	1 = Yes 2 = No	General information about the commercial mortgage.
Item 3(a)(11)	Balloon indicator. Indicate yes or no as to whether the loan documents require a lump-sum payment of principal at maturity.	1 = Yes 2 = No	General information about the commercial mortgage.
Item 3(a)(12)	Prepayment penalty indicator. Indicate yes or no as to whether the obligor is subject to prepayment penalties.	1 = Yes 2 = No	General information about the commercial mortgage.
Item 3(a)(13)	Negative amortization indicator. Indicate yes or no whether negative amortization (interest shortage) amounts are permitted to be added back to the unpaid principal balance of the loan if monthly payments should fall below the true amortized amount.	1 = Yes 2 = No	General information about the commercial mortgage.
Item 3(a)(14)	Mortgage modification indicator. Indicate yes or no whether the loan has been modified.	1 = Yes 2 = No	General information about the commercial mortgage.
Item 3(a)(15)(i)	ARM index. Specify the code that describes the index on which an adjustable interest rate is based.	1 = 11 FHLB COFI (1 Month) 2 = 11 FHLB COFI (6 Month) 3 = 1 Year CMT Weekly Average Treasury 4 = 3 Year CMT Weekly Average Treasury 5 = 5 Year CMT Weekly Average Treasury 6 = Wall Street Journal Prime Rate 7 = 1 Month LIBOR 8 = 3 Month LIBOR 9 = 6 Month LIBOR 10 = National Mortgage Index Rate 98 = Other	ARM.
Item 3(a)(15)(ii)	First rate adjustment date. Provide the date on which the first interest rate adjustment becomes effective.	Date	ARM.
Item 3(a)(15)(iii)	First payment adjustment date. Provide the date on which the first adjustment to the regular payment amount becomes effective (after the contribution/cut-off date).	Date	ARM.
Item 3(a)(15)(iv)	ARM margin. Indicate the number of percentage points that is added to the current index value to establish the new note rate at each interest rate adjustment date.	Number	ARM.

TABLE 1—SCHEDULE L ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(a)(15)(v)	Liftetime rate ceiling. Indicate the percentage of the maximum interest rate that can be in effect during the life of the loan.	%	ARM.
Item 3(a)(15)(vi)	Lifetime rate floor. Indicate the percentage of the minimum interest rate that can be in effect during the life of the loan.	%	ARM.
Item 3(a)(15)(vii)	Periodic rate increase. Provide the maximum percentage the interest rate can increase from any period to the next.	%	ARM.
Item 3(a)(15)(viii)	Periodic rate decrease. Provide the maximum percentage the interest rate can decrease from any period to the next.	%	ARM.
Item 3(a)(15)(ix)	Periodic pay adjustment. Provide the maximum dollar amount the principal and interest constant can increase or decrease on any adjustment date.	%	ARM.
Item 3(a)(15)(x)	Periodic pay adjustment. Provide the maximum percentage amount the principal and interest constant can increase or decrease from any period to the next.	%	ARM.
Item 3(a)(15)(xi)	Rate reset frequency. Indicate the code describing the frequency which the periodic mortgage rate is reset due to an adjustment in the ARM index.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily	ARM.
Item 3(a)(15)(xii)	Pay reset frequency. Indicate the code describing the frequency which the periodic mortgage payment will be adjusted.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily	ARM.
Item 3(a)(15)(xiii)	Index look back. Provide the number of days prior to an interest rate adjustment effective date used to determine the appropriate index rate.	Number	ARM.
Item 3(a)(16)	Servicing fee—percentage. If the servicing fee is based on a percentage, indicate the percentage of monthly servicing fee paid to all servicers as a percentage of the original contract amount.	%	General information about the commercial mortgage.
Item 3(a)(16)(i)	Prepayment lock-out end date. Provide the effective date after which the lender allows prepayment of a loan.	Date	Prepayment Premium.
Item 3(a)(16)(ii)	Yield maintenance end date. Provide the date after which yield maintenance prepayment penalties are no longer effective.	Date	Prepayment Premium.
Item 3(a)(16)(iii)	Prepayment premium end date. Provide the effective date after which prepayment premiums are no longer effective.	Date	Prepayment Premium.
Item 3(a)(17)(i)	Maximum negative amortization allowed (% of original balance). Provide the maximum percentage of the original loan balance that can be added to the original loan balance as the result of negative amortization.	%	Negative Amortization.
Item 3(a)(17)(ii)	Maximum negative amortization allowed ($). Provide the maximum dollar amount of the original loan balance that can be added to the original loan balance as the result of negative amortization.	Amount	Negative Amortization.

TABLE 1—SCHEDULE L ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(b)(1)	Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."	Text	General information about the commercial property.
Item 3(b)(2)	Geographic location. Specify the location of the property by providing the zip code.	Number	General information about the commercial property.
Item 3(b)(3)	Property type. Indicate the code that describes how the property is being used.	1 = Multifamily 2 = Retail 3 = HealthCare 4 = Industrial 5 = Warehouse 6 = Mobile home park 7 = Office 8 = Mixed use 9 = Lodging 10 = Self storage 11 = Securities 12 = Cooperative housing 98 = Other	General information about the commercial property.
Item 3(b)(4)	Net rentable square feet. Provide the net rentable square feet area of a property.	Number	General information about the commercial property.
Item 3(b)(5)	Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.	Number	General information about the commercial property.
Item 3(b)(6)	Year built. Provide the year that the property was built.	Number	General information about the commercial property.
Item 3(b)(7)	Valuation amount. The valuation amount of the property as of the valuation date.	Amount	General information about the commercial property.
Item 3(b)(8)	Valuation source. Specify the code that identifies the source of the most recent property valuation.	1 = Broker's price option 2 = Certified MAI appraisal 3 = Non-certified MAI appraisal 4 = Master servicer estimate 5 = SS estimate 98 = Other	General information about the commercial property.
Item 3(b)(9)	Valuation date. The date the valuation amount was determined.	Date	General information about the commercial property.
Item 3(b)(10)	Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indication occupancy.	%	General information about the commercial property.
Item 3(b)(11)	Revenue. Provide the total underwritten revenue amount from all sources for a property.	Amount	General information about the commercial property.
Item 3(b)(12)	Operating expenses. Provide the total underwritten operation expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.	Amount	General information about the commercial property.
Item 3(b)(13)	Defeasance option start date. Provide the date when the defeasance option becomes available. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.	Date	General information about the commercial property.
Item 3(b)(14)	Net operating income. Provide the total underwritten revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.	Amount	General information about the commercial property.
Item 3(b)(15)	Net cash flow. Provide the total underwritten operating expenses and capital costs.	Amount	General information about the commercial property.

TABLE 1—SCHEDULE L ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(b)(16)	NOI/NCF indicator. Indicate the code that describes how net operating income and net cash flow were calculated.	1 = Calculated using CMSA standard 2 = Calculated using a definition given in the PSA 3 = Calculated using the underwriting method 98 = Other	General information about the commercial property.
Item 3(b)(17)	DSCR (NOI). Provide the ratio of underwritten net operating income to debt service.	%	General information about the commercial property.
Item 3(b)(18)	DSCR (NCF). Provide the ratio of underwritten net cash flow to debt service.	Number	General information about the commercial property.
Item 3(b)(19)	DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.	1 = Average—Not all properties received financial statements, servicer allocates debt service only to properties where financial statements are received.. 2 = Consolidated—All properties reported on one "rolled up" financial statement from the borrower 3 = Full—All financial statements collected for all properties 4 = None Collected—No financial statements were received 5 = Partial—Not all properties received financial statements, servicer to leave empty 6 = "Worst Case"—Not all properties received financial statements, servicer allocates 100% of debt service to all properties where financial statements are received.	General information about the commercial property.
Item 3(b)(20)	Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).	Name	General information about the commercial property.
Item 3(b)(21)	Square feet of largest tenant. Provide total square feet leased by the large tenant	Number	General information about the commercial property.
Item 3(b)(22)	Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.	Date	General information about the commercial property.
Item 3(b)(23)	Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).	Name	General information about the commercial property.
Item 3(b)(24)	Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.	Number	General information about the commercial property.
Item 3(b)(25)	Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.	Date	General information about the commercial property.
Item 3(b)(26)	Third largest tenant. Identify the tenant that leases the third largest square feet of the property (based on the most recent annual lease rollover review).	Text	General information about the commercial property.
Item 3(b)(27)	Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.	Number	General information about the commercial property.
Item 3(b)(28)	Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.	Date	General information about the commercial property.

TABLE 4—SCHEDULE L ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 4(a)(1)	Payment type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.	1 = Monthly 2 = Balloon 98 = Other	General information about the automobile loan.
Item 4(a)(2)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the buyer.	1 = Yes 2 = No	General information about the automobile loan.
Item 4(b)(1)	Geographic location of dealer. Provide the zip code of the originating dealer.	Number	General information about the automobile.
Item 4(b)(2)	Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.	Text	General information about the automobile.
Item 4(b)(3)	Vehicle model. Provide the name of the model of the vehicle.	Text	General information about the automobile.
Item 4(b)(4)	New or used. Indicate whether the vehicle financed is new or used.	1 = New 2 = Used	General information about the automobile.
Item 4(b)(5)	Model year. Indicate the model year of the vehicle.	Year	General information about the automobile.
Item 4(b)(6)	Vehicle type. Indicate the code describing the vehicle type.	1 = Full-size car 2 = Full size van/truck 3 = Full-size SUV 4 = Mid-size SUV 5 = Compact van/truck 6 = Economy/compact car 7 = Mid-size car 8 = Sports car 9 = Motorcycle 98 = Other 99 = Unknown	General information about the automobile.
Item 4(b)(7)	Vehicle value. Indicate the value of the vehicle at the time of origination.	Number	General information about the automobile.
Item 4(b)(8)	Source of vehicle value. Specify the code that describes the source of the vehicle value.	1 = Invoice price 2 = Sales price 3 = Kelly Blue Book 98 = Other	General information about the automobile.
Item 4(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor	Text	General information about the obligor.
Item 4(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 4(c)(3).	Text or Number	General information about the obligor.
Item 4(c)(3)	Obligor FICO score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.
Item 4(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Name	General information about the obligor.
Item 4(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 4(c)(6).	Text or Number	General information about the obligor.
Item 4(c)(6)	Co-obligor FICO score. Provide the standardized FICO credit score of the co-obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.

TABLE 4—SCHEDULE L ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 4(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor.
Item 4(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor.
Item 4(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, Level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor.
Item 4(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, Level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor.
Item 4(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 4(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 4(c)(13)	Length of employment: Obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months	General information about the obligor.

TABLE 4—SCHEDULE L ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		8 = 121–240 months 9 = greater than 240 months	
Item 4(c)(14)	Length of employment: Co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	General information about the obligor.
Item 4(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 4(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 4(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999	General information about the obligor.

TABLE 4—SCHEDULE L ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	
Item 4(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 4(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor
Item 4(c)(20)	All obligor total income. Provide the monthly income of all obligors.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.

TABLE 4—SCHEDULE L ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 4(c)(21)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09–01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the obligor.

TABLE 5—SCHEDULE L ITEM 5. AUTOMOBILE LEASES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 5(a)(1)	Payment type. Specify the code indicating whether payments are required monthly or if a balloon payment is due.	1 = Monthly 2 = Balloon 98 = Other	General information about the automobile lease.
Item 5(a)(2)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.	1 = Yes 2 = No	General information about the automobile lease.
Item 5(b)(1)	Geographic location of dealer. Provide the zip code of the originating dealer.	Number	General information about the automobile.
Item 5(b)(2)	Vehicle manufacturer. Provide the name of the manufacturer of the vehicle.	Text	General information about the automobile.
Item 5(b)(3)	Vehicle model. Provide the name of the model of the vehicle.	Text	General information about the automobile.
Item 5(b)(4)	New or used. Indicate whether the vehicle financed is new or used.	1 = New 2 = Used	General information about the automobile.
Item 5(b)(5)	Model year. Indicate the model year of the vehicle.	Date	General information about the automobile.
Item 5(b)(6)	Vehicle type. Indicate the code describing the vehicle type.	1 = Full-size car 2 = Full size van/truck 3 = Full-size SUV 4 = Mid-size SUV 5 = Compact van/truck 6 = Economy/compact car 7 = Mid-size car 8 = Sports car 9 = Motorcycle 98 = Other 99 = Unknown	General information about the automobile.
Item 5(b)(7)	Vehicle value. Indicate the value of the vehicle at the time of origination.	Number	General information about the automobile.
Item 5(b)(8)	Source of vehicle value. Specify the code that describes the source of the vehicle value.	1 = Invoice price 2 = Sales price 3 = Kelly Blue Book 98 = Other	General information about the automobile.
Item 5(b)(9)	Base residual value. Provide the residual value of the vehicle at the time of origination.	Number	General information about the automobile.
Item 5(b)(10)	Source of base residual value. Specify the code that describes the source of the residual value.	1 = Black Book 2 = Automotive lease guide 98 = Other	General information about the automobile.
Item 5(c)(1)	Obligor credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor.
Item 5(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 5(c)(3).	Text or Number	General information about the obligor.

TABLE 5—SCHEDULE L ITEM 5. AUTOMOBILE LEASES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 5(c)(3)	Obligor FICO Score. If the obligor credit score type is FICO, provide the standardized FICO credit score of the obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.
Item 5(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Name	General information about the obligor.
Item 5(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 5(c)(6).	Text or Number	General information about the obligor.
Item 5(c)(6)	Co-obligor FICO score. Provide the standardized FICO credit score of the co-obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	General information about the obligor.
Item 5(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor.
Item 5(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	General information about the obligor.
Item 5(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, level 3 verified Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	General information about the obligor.
Item 5(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, Level 3 verified	General information about the obligor.

TABLE 5—SCHEDULE L ITEM 5. AUTOMOBILE LEASES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		Level 3 verified = Direct independent verification with a third party of the obligor's current employment.	
Item 5(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 5(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	General information about the obligor.
Item 5(c)(13)	Length of employment: Obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	General information about the obligor.
Item 5(c)(14)	Length of employment: Co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	General information about the obligor.
Item 5(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 5(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999	General information about the obligor.

TABLE 5—SCHEDULE L ITEM 5. AUTOMOBILE LEASES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	
Item 5(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 5(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligors monthly income other than co-obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 5(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999	General information about the obligor.

TABLE 5—SCHEDULE L ITEM 5. AUTOMOBILE LEASES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 5(c)(20)	All obligor total income. Provide the monthly income of all obligors.	21 = greater than $50,000 1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	General information about the obligor.
Item 5(c)(21)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09–01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the obligor.

TABLE 6—SCHEDULE L ITEM 6. EQUIPMENT LOANS ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 6(a)(1)	Payment frequency. Specify the code that describes the payment frequency on the loan.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily 6 = Irregular	General information about the equipment loan.
Item 6(b)(1)	Equipment type. Indicate the code that describes the equipment type.	1 = Construction 2 = Furniture and fixtures 3 = General Office Equipment/Copiers 4 = Industrial 5 = Maritime 6 = Printing presses 7 = Technology 8 = Telecommunications 9 = Transportation 98 = Other	General information about the equipment.
Item 6(b)(2)	New or used. Indicate whether the equipment financed is new or used.	1 = New 2 = Used	General information about the equipment.
Item 6(c)(1)	Obligor industry. Indicate the code that describes the industry category of the obligor.	1 = Agriculture and Resources 2 = Communication and Utilities 3 = Construction 4 = Distribution/wholesale 5 = Electronics 6 = Financial Services 7 = Forestry & Fishing 8 = Healthcare 9 = Manufacturing 10 = Mining 11 = Printing & Publishing 12 = Public Administration 13 = Retail	General information about the obligor.

TABLE 6—SCHEDULE L ITEM 6. EQUIPMENT LOANS ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		14 = Services 15 = Transportation 98 = Other	
Item 6(c)(2)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor.

TABLE 7—SCHEDULE L ITEM 7. EQUIPMENT LEASES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 7(a)(1)	Lease type. Indicate whether the lease is a true lease or finance lease.	1 = True lease 2 = Finance lease	General information about the equipment lease.
Item 7(a)(2)	Payment frequency. Indicate the code that describes the payment frequency on the lease.	1 = Monthly 2 = Quarterly 3 = Semi-annually 4 = Annually 5 = Daily 6 = Irregular	General information about the equipment lease.
Item 7(b)(1)	Equipment type. Indicate the code that describes the equipment type.	1 = Construction 2 = Furniture and fixtures 3 = General office equipment/copiers 4 = Industrial 5 = Maritime 6 = Printing presses 7 = Technology 8 = Telecommunications 9 = Transportation 98 = Other	General information about the equipment.
Item 7(b)(2)	New or used. Indicate whether the equipment financed is new or used.	1 = New 2 = Used	General information about the equipment.
Item 7(b)(3)	Residual value. Provide the residual value of the equipment at the time of origination. For operating leases, provide the value of the asset at the end of its useful economic life (i.e., "salvage" or "scrap value").	Number	General information about the equipment.
Item 7(b)(4)	Source of residual value. Specify the code that describes the source of the residual value.	1 = Internal 2 = External 3 = Consultant 98 = Other	General information about the equipment.
Item 7(c)(1)	Obligor industry. Indicate the code that describes the industry category of the obligor.	1 = Agriculture and resources 2 = Communication and utilities 3 = Construction 4 = Distribution/wholesale 5 = Electronics 6 = Financial services 7 = Forestry & fishing 8 = Healthcare 9 = Manufacturing 10 = Mining 11 = Printing & publishing 12 = Public administration 13 = Retail 14 = Services 15 = Transportation 98 = Other	General information about the obligor.
Item 7(c)(2)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor.

TABLE 8—SCHEDULE L ITEM 8. STUDENT LOANS ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 8(a)(1)	Subsidized. Indicate whether the loan is subsidized or unsubsidized.	1 = Subsidized 2 = Unsubsidized	General information about the student loan.

TABLE 8—SCHEDULE L ITEM 8. STUDENT LOANS ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 8(a)(2)	Repayment type. Indicate the code that describes the type of loan repayment terms.	1 = Level 2 = Graduated repayment 3 = Income-sensitive 4 = Interest-only period	General information about the student loan.
Item 8(a)(3)	Year in repayment. If the loan is in repayment, indicate the number of years the loan has been in repayment.	Number	General information about the student loan.
Item 8(a)(4)	Guarantee agency. Specify the name of the agency guaranteeing the loan.	Text	General information about the student loan.
Item 8(a)(5)	Disbursement date. Indicate the date the loan was disbursed to the obligor.	Month/Year	General information about the student loan.
Item 8(b)(1)	Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.	1 = In-school 2 = Grace period 3 = Deferral 4 = Forbearance 5 = Repayment	General information about the obligor.
Item 8(b)(2)	Geographic location of obligor. Specify the location of the obligor by providing the Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable.	Number Note: The U.S. Office of Management and Budget (OMB) establishes and maintains definitions of Metropolitan Statistical Areas, Micropolitan Statistical Areas, or Metropolitan Divisions. The most recent list of definitions are available in OMB Bulletin No. 09–01, "Update of Statistical Area Definitions and Guidance on Their Uses", November 2008.	General information about the obligor.
Item 8(b)(3)	School type. Indicate code describing the type of school or program.	1 = Continuing Education 2 = Graduate 3 = K–12 4 = Medical 5 = Undergraduate 98 = Other	General information about the obligor.
Item 8(c)(1)	Obligor credit score type. Specify the Type of the standardized credit score used to evaluate the obligor.	Text	Private Student Loans—General information about the obligor.
Item 8(c)(2)	Obligor credit score. Provide the standardized credit score of the obligor. If the credit score type is FICO, skip to Item 8(c)(3).	Text or Number	Private Student Loans—General information about the obligor.
Item 8(c)(3)	Obligor FICO score. Provide the standardized FICO credit score of the obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	Private Student Loans—General information about the obligor.
Item 8(c)(4)	Co-obligor credit score type. Specify the type of the standardized credit score used to evaluate the co-obligor.	Text	Private Student Loans—General information about the obligor.
Item 8(c)(5)	Co-obligor credit score. Provide the standardized credit score of the co-obligor. If the credit score type is FICO, skip to Item 8(c)(6).	Text or Number	Private Student Loans—General information about the obligor.
Item 8(c)(6)	Co-obligor FICO score. Provide the standardized credit score of the co-obligor.	1 = up to 499 2 = 500–549 3 = 550–599 4 = 600–649 5 = 650–699 6 = 700–749 7 = 750–799 8 = 800+	Private Student Loans—General information about the obligor.

TABLE 8—SCHEDULE L ITEM 8. STUDENT LOANS ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 8(c)(7)	Obligor income verification level. Indicate the code describing the extent to which the obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	Private Student Loans—General information about the obligor.
Item 8(c)(8)	Co-obligor income verification. Indicate the code describing the extent to which the co-obligor's income has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified 5 = Stated, "level 5" verified Level 4 income verification = Previous year W–2 or tax returns, and year-to-date pay stubs, if salaried. If self-employed, then obligor provided 2 years of tax returns. Level 5 income verification = 24 months income verification (W–2s, pay stubs, bank statements and/or tax returns). If self-employed, then obligor provided 2 years tax returns plus a CPA certification of the tax returns.	Private Student Loans—General information about the obligor.
Item 8(c)(9)	Obligor employment verification. Indicate the code describing the extent to which the obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, level 3 verified Level 3 verified = direct independent verification with a third party of the obligor's current employment.	Private Student Loans—General information about the obligor.
Item 8(c)(10)	Co-obligor employment verification. Indicate the code describing the extent to which the co-obligor's employment has been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, level 3 verified Level 3 verified = direct independent verification with a third party of the obligor's current employment.	Private Student Loans—General information about the obligor.
Item 8(c)(11)	Obligor asset verification. Indicate the code describing the extent to which the obligor's assets used to qualify the loan have been verified.	1 = Not stated, not verified 2 = Stated, not verified 3 = Stated, "partially" verified 4 = Stated, "level 4" verified Level 4 verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	Private Student Loans—General information about the obligor.
Item 8(c)(12)	Co-obligor asset verification. Indicate the code describing the extent to which the co-obligor's assets used to qualify the loan have been verified.	1 = Not Stated, Not Verified 2 = Stated, Not Verified 3 = Stated, "Partially" Verified 4 = Stated, "Level 4" Verified Level 4 Verified = 2 months of bank statements/balance documentation (written or electronic) for liquid assets (or gift letter).	Private Student Loans—General information about the obligor.
Item 8(c)(13)	Length of employment: Obligor. Provide the number of complete months of service with the obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months	Private Student Loans—General information about the obligor.

TABLE 8—SCHEDULE L ITEM 8. STUDENT LOANS ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		8 = 121–240 months 9 = greater than 240 months	
Item 8(c)(14)	Length of employment: co-obligor. Provide the number of complete months of service with the co-obligor's current employer as of the origination date.	1 = 0–6 months 2 = 7–12 months 3 = 13–18 months 4 = 19–24 months 5 = 25–36 months 6 = 37–60 months 7 = 61–120 months 8 = 121–240 months 9 = greater than 240 months	Private Student Loans—General information about the obligor.
Item 8(c)(15)	Obligor wage income. Provide the dollar amount per month of income associated with the obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	Private Student Loans—General information about the obligor.
Item 8(c)(16)	Co-obligor wage income. Provide the dollar amount per month of income associated with the co-obligor's employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	Private Student Loans—General information about the obligor.
Item 8(c)(17)	Obligor other income. Provide the dollar amount of the obligor's monthly income other than obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999	Private Student Loans—General information about the obligor.

TABLE 8—SCHEDULE L ITEM 8. STUDENT LOANS ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	
Item 8(c)(18)	Co-obligor other income. Provide the dollar amount of the co-obligor's monthly income other than co-obligor wage income.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	Private Student Loans—General information about the obligor.
Item 8(c)(19)	All obligor wage income. Provide the monthly income of all obligors derived from employment.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	Private Student Loans—General information about the obligor.
Item 8(c)(20)	All obligor total income. Provide the monthly income of all obligors.	1 = less than $500 2 = $500–$999 3 = $1,000–$1,499 4 = $1,500–$1,999 5 = $2,000–$2,499 6 = $2,500–$2,999 7 = $3,000–$3,499 8 = $3,500–$3,999 9 = $4,000–$4,499 10 = $4,500–$4,999 11 = $5,000–$5,999 12 = $6,000–$6,999 13 = $7,000–$7,999 14 = $8,000–$9,999 15 = $10,000–$14,999 16 = $15,000–$19,999 17 = $20,000–$24,999 18 = $25,000–$29,999 19 = $30,000–$39,999 20 = $40,000–$49,999 21 = greater than $50,000	Private Student Loans—General information about the obligor.

TABLE 9—SCHEDULE L ITEM 9. FLOORPLAN FINANCING ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 9(a)(1)	Account origination date. Provide the date of account origination.	Date	General information about the account.
Item 9(b)(1)	Product line. Indicate the code describing the type of inventory product line.	1 = Accounts receivable 2 = Consumer electronics & appliances 3 = Industrial 4 = Lawn & garden 5 = Manufactured housing 6 = Marine 7 = Motorcycles 8 = Musical Instruments 9 = Power sports 10 = Recreational vehicles 11 = Technology 12 = Transportation 98 = Other	General information about the collateral.
Item 9(b)(2)	New or used. Indicate whether the collateral securing the loan is new or used.	1 = New 2 = Used	General information about the collateral.
Item 9(c)(1)	Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General information about the obligor.
Item 9(c)(2)	Credit score. Provide the standardized credit score of the obligor.	Text or Number	General information about the obligor.
Item 9(c)(3)	Geographic location of obligor. Provide the zip code of the obligor.	Number	General information about the obligor.

TABLE 10—SCHEDULE L ITEM 10. CORPORATE DEBT ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 10(a)	Title of underlying security. Specify the title of the underlying security.	Text	General information about the underlying security.
Item 10(b)	Denomination. Give the minimum denomination of the underlying security.	Number	General information about the underlying security.
Item 10(c)	Currency. Specify the currency of the underlying security.	Text	General information about the underlying security.
Item 10(d)	Trustee. Specify the name of the trustee.	Text	General information about the underlying security.
Item 10(e)	Underlying SEC file number. Specify the registration statement file number of the registration of the offer and sale of the underlying security.	Number	General information about the underlying security.
Item 10(f)	Underlying CIK number. Specify the CIK number of the issuer of the underlying security.	Number	General information about the underlying security.
Item 10(g)	Callable. Indicate whether the security is callable.	1 = Callable 2 = Not Callable	General information about the underlying security.
Item 10(h)	Payment frequency. Indicate the code describing the frequency of payments that will be made on the underlying security.	1 = Monthly 2 = Quarterly 3 = Semi-Annually 4 = Annually 5 = Daily 6 = Irregular	General information about the underlying security.
Item 10(i)	Zero coupon indicator. Indicate yes or no as to whether an underlying security or agreement is interest bearing.	1 = Yes 2 = No	General information about the underlying security.

TABLE 11—SCHEDULE L–D ITEM 1. GENERAL

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(a)	Asset number type. Identify the source of the asset number used to specifically identify each asset in the pool.	Number	General Information.

TABLE 11—SCHEDULE L–D ITEM 1. GENERAL—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(b)	Asset number. Provide the unique ID number of the asset. *Instruction to Item 1(b).* The asset number should be the same number that was previously used to identify the asset in Schedule L (§ 229.1111A).	Number	General Information.
Item 1(c)	Asset group number. For Structures with multiple collateral groups, indicate the collateral group number in which the asset falls.	Number	General Information.
Item 1(d)	Reporting period begin date. Specify the beginning date of the reporting period.	Date	General Information.
Item 1(e)	Reporting period end date. Specify the servicer cut-off date for the reporting period.	Date	General Information.
Item 1(f)(1)	Total actual amount paid. Indicate the total payment (including all escrows) paid to the servicer during the reporting period.	Number	General Information.
Item 1(f)(2)	Actual interest paid. Indicate the amount of interest collected during the reporting period.	Number	General Information.
Item 1(f)(3)	Actual principal paid. Indicate the amount of principle collected during the reporting period.	Number	General Information.
Item 1(f)(4)	Actual other amounts paid. Indicate the total of any other amounts collected during the reporting period.	Number	General Information.
Item 1(f)(5)	Other principal adjustments. Indicate any other amounts that would cause the principal balance of the loan to be decreased or increased during the reporting period.	Number	General Information.
Item 1(f)(6)	Other interest adjustments. Indicate any unscheduled interest adjustments during the reporting period.	Number	General Information.
Item 1(f)(7)	Current asset balance. Indicate the outstanding principal balance of the asset as of the servicer cut-off date.	Number	General Information.
Item 1(f)(8)	Current scheduled asset balance. Indicate the scheduled principal balance of the asset as of the servicer cut-off date.	Number	General Information.
Item 1(f)(9)	Current scheduled payment amount. Indicate the total payment amount that was scheduled to be collected for this reporting period (including all fees and escrows).	Number	General Information.
Item 1(f)(10)	Current scheduled principal amount. Indicate the principal payment amount that was scheduled to be collected for this reporting period.	Number	General Information.
Item 1(f)(11)	Current scheduled interest amount. Indicate the interest payment amount that was scheduled to be collected for this reporting period.	Number	General Information.
Item 1(f)(12)	Current delinquency status. Indicate the number of days the obligor is delinquent as determined by the governing transaction agreement.	Number	General Information.
Item 1(f)(13)	Number of days payment is past due. If an obligor has not made the full scheduled payment, indicate the number of days between the scheduled payment date and the Reporting Period End Date.	Number	General Information.
Item 1(f)(14)	Current payment status. Indicate the number of payments the obligor is past due as of the cut-off date.	Number	General Information.

TABLE 11—SCHEDULE L–D ITEM 1. GENERAL—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(f)(15)	Pay history. Provide the coded string of values that describes the payment performance of the asset over the most recent 12 months.	0 = Current 1 = 30–59 Days 2 = 60–89 Days 3 = 90–119 Days 4 = 120 Days + 7 = Loan did not exist in period X = Unknown The most recent month is located to the right. A sample entry could be "777723100000"	General Information.
Item 1(f)(16)	Next due date. For loans that have not been paid off, indicate the date on which the next payment is due on the asset.	Date	General Information.
Item 1(f)(17)	Next interest rate. For loans that have not been paid-off, indicate the interest rate that is in effect as of the next scheduled remittance due to the investor.	%	General Information.
Item 1(f)(18)	Remaining term to maturity. For loans that have not been paid-off, indicate the number of months between the cut-off date and the asset maturity date.	Number	General Information.
Item 1(g)(1)	Current servicing fee-amount. Indicate the dollar amount of the fee earned by the current servicer for administering the loan for this reporting period.	Number	General Information.
Item 1(g)(2)	Current servicer. Indicate the name or MERS organization number of the entity that currently services the asset.	Text or Number	General Information.
Item 1(g)(3)	Servicing transfer received date. If a loan's servicing has been transferred, provide the effective date of the servicing transfer.	Date	General Information.
Item 1(g)(4)	Servicer advanced amount. If amounts were advanced by the servicer during the reporting period, specify the amount.	Number	General Information.
Item 1(g)(5)	Cumulative outstanding advance amount. Specify the outstanding cumulative amount advanced by the servicer.	Number	General Information.
Item 1(g)(6)	Servicing advance methodology. Indicate the code that describes the manner in which principal and/or interest are to be advanced by the servicer.	1 = scheduled interest, scheduled principal;. 2 = actual interest, actual principal; 3 = scheduled interest, actual principal; 98 = other 99 = unknown	General Information.
Item 1(g)(7)	Stop principal and interest advance date. Provide the first payment due date for which the servicer ceased advancing principal or interest.	Date	General Information.
Item 1(g)(8)	Other loan-level servicing fee(s) retained by servicer. Provide the amount of all other fees earned by loan administrators that reduce the amount of funds remitted to the issuing entity (including subservicing, master servicing, trustee fees, etc).	Number	General Information.
Item 1(g)(9)	Other assessed but uncollected servicer fees. Provide the cumulative amount of late charges and other fees that have been assessed by the servicer, but not paid by the obligor.	Number	General Information.

TABLE 11—SCHEDULE L–D ITEM 1. GENERAL—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 1(h)	Modification indicator. Indicates yes or no whether the asset was modified from its original terms during the reporting period.	1 = Yes 2 = No	General Information.
Item 1(i)	Repurchase indicator. Indicate yes or no whether the asset has been repurchased from the pool. If the asset has been repurchased, provide the following additional information.	1 = Yes 2 = No	General Information.
Item 1(i)(1)	Repurchase notice. Indicate yes or no whether a notice of repurchase has been received.	1 = Yes 2 = No	General Information.
Item 1(i)(2)	Repurchase date. Indicate the date the asset was repurchased.	Date	General Information.
Item 1(i)(3)	Repurchaser. Specify the name of the repurchaser.	Text	General Information.
Item 1(i)(4)	Repurchase reason. Indicate the code that describes the reason for the repurchase.	Text	General Information.
Item 1(j)	Liquidated indicator. Indicate yes or no as to whether the asset has been liquidated. An asset is considered liquidated if the related collateral has been sold or disposed, or if the asset has been charged-off in its entirety without realizing upon the collateral.	1 = Yes 2 = No	General Information.
Item 1(k)	Charge-off indicator. Indicate yes or no as to whether the asset has been charged-off. The asset is charged-off when it will be treated as a loss or expense because payment is unlikely.	1 = Yes 2 = No	General Information.
Item 1(k)(1)	Charged-off principal amount. Specify the amount of uncollected principal charged-off.	Number	General Information.
Item 1(k)(2)	Charged-off interest amount. Specify the amount of uncollected interest charged-off.	Number	General Information.
Item 1(l)(1)	Paid-in-full indicator. Indicate yes or no whether the asset is paid in full.	1 = Yes 2 = No	General Information.
Item 1(l)(2)(i)	Pledged prepayment penalty paid. Provide the total amount of the prepayment penalty that was collected from the obligor.	Number	Prepayment Penalties.
Item 1(l)(2)(ii)	Pledged prepayment penalty waived. Provide the total amount of the prepayment penalty that was incurred by the obligor, but not collected by the servicer.	Number	Prepayment Penalties.
Item 1(l)(2)(iii)	Reason for not collecting pledge prepayment penalty. Indicate the code that describes the reason that a prepayment penalty due from a borrower was not collect by the servicer.	1 = Hardship 2 = State Parameters 3 = Facilitate Loss Mitigation 4 = Proof of Sale 5 = Payoff after Breach 98 = Other 99 = Unknown	Prepayment Penalties.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(a)(1)	Non-pay reason. Indicate the code that describes the reason for loan delinquency.	1 = Death of principal borrower 2 = Illness of principal borrower—delinquency is attributable to a prolonged illness that keeps the principal borrower from working and generating income.	Delinquent loans.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		3 = Illness of borrower's family member—delinquency is attributable to the principal borrower's having incurred extraordinary expenses as the result of the illness of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower's illness). 4 = Death of borrower's family member—delinquency is attributable to the principal borrower's having incurred extraordinary expenses as the result of the death of a family member (or having taken on the sole responsibility for repayment of the mortgage debt as the result of the co-borrower's death).the mortgage debt, etc. 5 = Marital difficulties—delinquency is attributable to problems associated with a separation or divorce, such as a dispute over ownership of the property, a decision not to make payments until the divorce settlement is finalized, a reduction in the income available to repay. 6 = Curtailment of income—delinquency is attributable to a reduction in the borrower's income, such as a garnishment of wages, a change to a lower paying job, reduced commissions or overtime pay, loss of a part-time job, etc. 7 = Excessive obligations—delinquency is attributable to the borrower's having incurred excessive debts (either in a single instance or as a matter of habit) that prevent him or her from making payments on both those debts and the mortgage debt. 8 = Abandonment of property—delinquency is attributable to the borrower's having abandoned the property for reason(s) that are not known by the servicer (because the servicer has not been able to locate the borrower). 9 = Distant employment transfer—delinquency is attributable to the principal borrower's being transferred or relocated to a distant job location and incurring additional expenses for moving and housing in the new location, which affects his or her ability to pay both those expenses and the mortgage debt. 10 = Property problem—delinquency is attributable to the condition of the improvements on the property (substandard construction, expensive and extensive repairs needed, subsidence of sinkholes on property, impaired rights of ingress and egress, etc.) or the borrower's dissatisfaction with the property or the neighborhood.	

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		11 = Inability to sell property—delinquency is attributable to the borrower's having difficulty in selling the property. 12 = Inability to rent property—delinquency is attributable to the borrower's needing rental income to make the mortgage payments and having difficulty in finding a tenant for a one-family investment property or for one or more of the units in a one-family to four family property. 13 = Military service—delinquency is attributable to the principal borrower's having entered active duty status and his or her military pay not being sufficient to enable the continued payment of the existing mortgage debt. 14 = Unemployment—delinquency is attributable to a reduction in income resulting from the principal borrower's having lost his or her job. 15 = Business failure—delinquency is attributable to a self-employed principal borrower's having a reduction in income and/or having excessive obligations that are the direct result of the failure of his or her business to remain a viable entity or, at least, to generate sufficient profit that the borrower can rely on to meet his or her personal obligations. 16 = Casualty loss—delinquency is attributable to the borrower's having incurred a sudden, unexpected property loss as the result of an accident, fire, storm, theft, earthquake, etc. 17 = Energy-environment costs—the delinquency is attributable to the borrower's having incurred excessive energy-related costs or costs associated with the removal of environmental hazards in, on, or near the property. 18 = Servicing problems—the delinquency is attributable to the borrower's being dissatisfied with the way the mortgage servicer is servicing the loan or with the fact that servicing of the loan has been transferred to a new servicer. 19 = Payment adjustment—the delinquency is attributable to the borrower's being unable to make a new payment that resulted from an increase related to a scheduled payment change for a graduated-payment or adjustable-rate mortgage; increased monthly escrow accruals that are needed to pay higher taxes, insurance premiums, or special assessments; or the spreading of the amount needed to repay an escrow shortage over the next year.	

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		20 = Payment dispute—the delinquency is attributable to a disagreement between the borrower and the mortgage servicer about the amount of the mortgage payment, the acceptance of a partial payment, or the application of previous payments that results in the borrower's refusal to make the payment(s) until the dispute is resolved. 21 = Transfer of ownership pending—the delinquency is attributable to the borrower's having agreed to sell the property and deciding not to make any additional payments. 22 = Fraud the delinquency is attributable to a legal dispute arising out of an alleged fraudulent or illegal action that occurred in connection with the origination of the mortgage (or later) 23 = Unable to contact borrower—the delinquency cannot be ascertained because the borrower cannot be located or has not responded to the servicer's inquiries. 24 = Incarceration—the delinquency is attributable to the principal borrower's having been jailed or imprisoned (regardless of whether he or she is still incarcerated). 98 = Other 99 = Unknown	
Item 2(a)(2)	Non-pay status. Indicate the code that describes the delinquency status of the loan.	9 = Forbearance—the servicer has authorized a temporary suspension of payments or has agreed to accept periodic payments of less than the borrower's scheduled monthly payment, periodic payments at different intervals, etc., to give the borrower additional time and a means for bringing the mortgage current by repaying all delinquent installments.. 12 = Repayment plan—the servicer has an agreement with the borrower for the acceptance of regularly scheduled monthly mortgage payments plus an additional amount over a prescribed number of months to bring the mortgage loan current. 17 = Pre-foreclosure sale—the servicer plans to pursue a preforeclosure sale (a payoff of less than the full amount of our indebtedness) to avoid the expenses of foreclosure proceedings. 24 = Drug seizure—the Department of Justice (or any other state or federal agency) has decided to seize (or has seized) a property under the forfeiture provision of the Controlled Substances Act. 26 = Refinance—the servicer is aware that the borrower is pursuing an arrangement whereby the existing first mortgage will be refinanced (paid off).	Delinquent loans.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		27 = Assumption—the servicer is working with the borrower to sell the property by permitting the purchaser to pay the delinquent installments and assume the outstanding debt in order to avoid a foreclosure. 28 = Modification—the servicer is working with the borrower to renegotiate the terms of the mortgage in order to avoid foreclosure. 29 = Charge-off—use this code to indicate that it is not in best interest to pursue collection efforts or legal actions against the borrower (because of a reduced value for the property, a low outstanding mortgage balance, or the presence of certain environmental hazards on the property). 30 = Third-party sale—use this code to indicate that an authorized foreclosure bid equal to the total debt secured by a property (or fair market value, if the mortgage insurer approves) and a successful third-party bidder was awarded the property at the foreclosure sale. 31 = Probate—Use this code to indicate that the servicer cannot pursue (or complete) foreclosure action because proceedings required to verify a deceased borrower's will are in process. 32 = Military indulgence—the servicer has granted a delinquent service member forbearance or foreclosure proceedings have been stayed under the provisions of the Servicemembers Civil Relief Act or any similar state law. 42 = Delinquent, no action—the loan is 90 + days delinquent, but the servicer has not taken legal action or initiated loss mitigation. 43 = Foreclosure—the servicer has referred the case to an attorney to take legal action to acquire the property through a foreclosure sale. 44 = Deed-in-lieu –the servicer was authorized to accept a voluntary conveyance of the property instead of initiating foreclosure proceedings. 49 = Assignment—mortgage is in the process of being assigned to the insurer or guarantor. 59 = Chapter 12 bankruptcy—the borrower has filed for bankruptcy under Chapter 12 of the Federal Bankruptcy Act. 61 = Second lien considerations—use this code for a second mortgage to indicate that the servicer is evaluating the advantages and disadvantages of pursuing a foreclosure action or recommending that the debt be charged off.	

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		62 = Veterans affairs—"no-bid"—use this code to indicate that the Department of Veterans Affairs refused to establish an "upset price" to be bid at the foreclosure sale for a VA-guaranteed mortgage that the servicer had referred for foreclosure. 63 = Veterans affairs—refund—use this code to indicate that the Department of Veterans Affairs has requested information about a VA-guaranteed mortgage the servicer referred for foreclosure, in order to reach a decision about whether to accept an assignment for purposes of refunding the mortgage to avoid foreclosure. 64 = Veterans affairs—buydown—Use this code to indicate that a cash contribution was agreed to be made to reduce the outstanding indebtedness of a VA-guaranteed mortgage for which the Department of Veterans Affairs failed to establish an "upset price" bid for the foreclosure sale, in order to get the VA to reconsider its decision about establishing an "upset price." 65 = Chapter 7 bankruptcy—the borrower has filed for bankruptcy under Chapter 7 of the Federal Bankruptcy Act 66 = Chapter 11 bankruptcy—the borrower has filed for bankruptcy under Chapter 11 of the Federal Bankruptcy Act. 67 = Chapter 13 bankruptcy—the borrower has filed for bankruptcy under Chapter 13 of the Federal Bankruptcy Act. 98 = Other 99 = Unknown	
Item 2(a)(3)	Reporting action code. Further indicate the code that defines the default/delinquent status of the loan.	3 = Modifiable ARM ..... 7 = No action 8 = Relief provision 10 = Loan approved for loss mitigation 11 = Money judgment 15 = Bankruptcy/litigation 13 = Inactivation 14 = Substitution 30 = Referred for foreclosure 60 = Payoff 65 = Repurchase	Delinquent loans.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
		70 = A property that was secured by an uninsured conventional mortgage has been acquired by foreclosure, when a property that was secured by a VA mortgage cannot be conveyed to VA because the VA refused to specify a bid amount, or when an RHS mortgage serviced under the special servicing option has been acquired by foreclosure. (The servicer also should use Action Code 70 to report its repurchase of an acquired property after submission of the REOgram, if the mortgage has not already been removed from our LASER records.) 71 = A property has been condemned or acquired by a third party. 72 = A property has been acquired by foreclosure and is pending conveyance to FHA, VA, or the MI.	
Item 2(b)(1)	Rate at next reset. Provide the interest rate that will be used to determine the next scheduled interest payment.	%	ARM.
Item 2(b)(2)	Next interest rate change date. Provide the next date that the note rate is scheduled to change.	Date	ARM.
Item 2(b)(3)	Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.	Number	ARM.
Item 2(b)(4)	Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.	Date	ARM.
Item 2(b)(5)	Option ARM indicator. Indicate yes or no whether the loan is an option ARM.	1 = Yes 2 = No	ARM.
Item 2(b)(6)	Exercised ARM conversion option Indicator. Indicate yes or no whether the borrower exercised an option to convert an ARM loan to a fixed interest rate loan.	1 = Yes 2 = No	ARM.
Item 2(c)(1)	Bankruptcy file date. Provide the date on which the obligor filed for bankruptcy.	Date	Bankruptcy.
Item 2(c)(2)	Bankruptcy case number. Provide the case number assigned by the court to the bankruptcy filing.	Number	Bankruptcy.
Item 2(c)(3)	Post-petition due date. Provide the date on which the next payment is due under the terms of the bankruptcy plan.	Date	Bankruptcy.
Item 2(c)(4)	Bankruptcy release reason. If the bankruptcy has been released, indicate the code that describes the reason for the release.	1 = Discharge 2 = Dismissal 3 = Relief of Stay 99 = Unknown	Bankruptcy.
Item 2(c)(5)	Bankruptcy release date. If the bankruptcy has been released, provide the date on which the loan was removed from bankruptcy as a result of dismissal, discharge, and/or the granting of a motion for relief.	Date	Bankruptcy.
Item 2(c)(6)	Contractual due date. Provide the actual due date of the loan payment had bankruptcy not been filed.	Date	Bankruptcy.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(c)(7)	Debt reaffirmed indicator. Indicate yes or no whether the obligor excluded this debt from the bankruptcy and reaffirmed the debt obligation.	1 = Yes 2 = No	Bankruptcy.
Item 2(c)(8)	Trustee pays all indicator. Indicate yes or no whether post-petition payments are sent to the bankruptcy trustee by the obligor and then forwarded to the servicer by the trustee.	1 = Yes 2 = No	Bankruptcy.
Item 2(d)	Loss mitigation type indicator. Indicate the code that describes the type of loss mitigation the servicer is pursuing with the borrower, loan, or property.	1 = Not in loss mitigation 2 = Short payoff 3 = Short sale 4 = Deed-in-lieu 5 = Modification 6 = Repayment plan 7 = Write-off consideration 8 = First review 9 = Forbearance 10 = Trial modification 98 = Other 99 = Unknown	General Information.
Item 2(e)(1)	Modification effective payment Date. Provide the date of first payment due post modification.	Date	Modification.
Item 2(e)(2)	Modification loan balance. Provide the loan balance as of Modification Effective Payment Date as reported on the Modification documents.	Number	Modification.
Item 2(e)(3)	Total capitalized amount. Provide the amount added to the principal balance of the loan pursuant to a loan modification.	Number	Modification.
Item 2(e)(4)	Pre-modification interest (note) rate. Provide the scheduled interest rate of the loan immediately preceding the modification effective payment date—or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.	%	Modification.
Item 2(e)(5)	Post-modification interest (note) rate. Provide the interest rate in effect as of the modification effective payment date.	%	Modification.
Item 2(e)(6)	Post-modification margin. Provide the margin as of the modification effective payment date. The margin is the number of percentage points added to the index to establish the new rate.	Number	Modification.
Item 2(e)(7)	Pre-modification P&I payment. Provide the scheduled total principal and interest payment amount preceding the modification effective payment date—or if servicer is no longer advancing principal and interest, the interest rate that would be in effect if the loan were current.	Number	Modification.
Item 2(e)(8)	Post-modification lifetime rate floor. Provide the minimum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).	%	Modification.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(e)(9)	Post-modification lifetime rate ceiling. Provide the maximum rate of interest that may be applied to an adjustable rate loan over the course of the loan's life (after modification).	%	Modification.
Item 2(e)(10)	Pre-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (prior to modification).	%	Modification.
Item 2(e)(11)	Post-modification initial interest rate decrease. Provide the maximum percentage by which the interest rate may adjust downward on the first interest rate adjustment date (after modification).	%	Modification.
Item 2(e)(12)	Pre-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (prior to modification).	%	Modification.
Item 2(e)(13)	Post-modification subsequent interest rate increase. Provide the maximum percentage increment by which the rate may adjust upward after the initial rate adjustment (after modification).	%	Modification.
Item 2(e)(14)	Pre-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (prior to modification).	%	Modification.
Item 2(e)(15)	Post-modification payment cap. Provide the percentage value by which a payment may increase or decrease in one period (after modification).	%	Modification.
Item 2(e)(16)	Post-modification principal and interest payment. Provide total Principal and Interest Payment amount as of the Modification Effective Payment Date.	Number	Modification.
Item 2(e)(17)	Pre-modification maturity date. Provide the loan's original maturity date (or, if the loan has been modified before, the maturity date in effect immediately preceding the most recent modification effective payment date).	Date	Modification.
Item 2(e)(18)	Post-modification maturity date. Provide the loan's maturity date as of the modification effective payment date.	Date	Modification.
Item 2(e)(19)	Pre-modification interest reset period (if changed). Provide the number of months of the original interest reset period of the loan.	Number	Modification.
Item 2(e)(20)	Post-modification interest reset period (if changed). Provide the number of months of the interest reset period of the loan as of the modification effective payment date.	Number	Modification.
Item 2(e)(21)	Pre-modification next interest rate change date. Provide the next interest reset date under the original terms of the loan (one month prior to new payment due date).	Date	Modification.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(e)(22)	Post-modification next reset date. Provide the next interest reset date as of the modification effective payment date.	Date	Modification.
Item 2(e)(23)	Modification front-end DTI. Provide the front-end DTI ratio (total monthly housing expense divided by monthly income) used to qualify the modification.	%	Modification.
Item 2(e)(24)	Income verification indicator. Indicate yes or no whether a Transcript of Tax Return (received pursuant to the filing of IRS Form 4506–T) was obtained to corroborate Modification Front-end DTI (calculated using pay stubs, W–2s and/or CPA certified tax returns).	1 = Yes 2 = No	Modification.
Item 2(e)(25)	Modification back-end DTI. Provide the back-end DTI ratio (total monthly debt divided by monthly income) used to qualify the modification.	%	Modification.
Item 2(e)(26)	Pre-modification interest only term. Provide the number of months of the interest-only period prior to the Modification Effective Payment Date.	Number	Modification.
Item 2(e)(27)	Post-modification interest only term. Provide the number of months of the interest-only period as of the modification effective payment date.	Number	Modification.
Item 2(e)(28)	Post-modification balloon payment amount. Provide the new balloon payment amount due at maturity as a result of loan modification, not including deferred amounts.	Number	Modification.
Item 2(e)(29)	Forgiven principal amount (cumulative). Provide the sum total of all principal balance reductions as a result of loan modification over the life of the deal.	Number	Modification.
Item 2(e)(30)	Forgiven interest amount (cumulative). Provide the sum total of all interest incurred and forgiven as a result of loan modification over the life of the deal.	Number	Modification.
Item 2(e)(31)	Forgiven principal amount (current period). Provide the total principal balance reduction as a result of loan modification during the current period.	Number	Modification.
Item 2(e)(32)	Forgiven interest amount (current period). Provide the total gross interest forgiven as a result of loan modification during the current period.	Number	Modification.
Item 2(e)(33)	Modified next payment adjust date. Provide the due date on which the next payment adjustment is scheduled to occur for an ARM loan per the modification agreement.	Date	Modification.
Item 2(e)(34)	Modified ARM indicator. If the loan is remaining an ARM loan, indicate whether the loan's existing ARM parameters are changing per the modification agreement.	1 = Yes 2 = No 99 = Unknown	Modification.
Item 2(e)(35)	Interest rate step indicator. Indicate whether the terms of the modification agreement call for the interest rate to step up over time.	1 = Yes 2 = No 99 = Unknown	Modification.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(e)(36)	Maximum future rate under step agreement. If the loan modification includes a step provision, provide the maximum interest rate to which the loan may step up.	%	Modification.
Item 2(e)(37)	Date of maximum rate. If the loan modification includes a step provision, provide the date on which the maximum interest rate will be reached.	Date	Modification.
Item 2(e)(38)	Non-interest bearing principal deferred amount (current period). Provide the total amount of principal deferred (or forborne) by the modification that is not subject to interest accrual.	Number	Modification.
Item 2(e)(39)	Non-interest bearing principal deferred amount (cumulative balance). Provide the total amount of principal deferred by the modification that is not subject to interest accrual.	Number	Modification.
Item 2(e)(40)	Recovery of deferred principal (current period). Provide the amount of deferred principal collected from the obligor during the current period.	Number	Modification.
Item 2(e)(41)	Non-interest bearing deferred interest and fees amount (current period). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual during the current period.	Number	Modification.
Item 2(e)(42)	Non-interest bearing deferred interest and fees amount (cumulative balance). Provide the total amount of interest and expenses deferred by the modification that is not subject to interest accrual.	Number	Modification.
Item 2(e)(43)	Recovery of deferred interest and fees (current period). Provide the amount of deferred interest and fees collected from the obligor during the current period.	Number	Modification.
Item 2(e)(44)	Forgiven non-principal and interest advances to be reimbursed by trust. Provide the total amount of expenses (including all escrow and corporate advances) that have been waived or forgiven by the servicer per the modification agreement reimbursable to the servicer pursuant to the terms of the transaction document. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.	Number	Modification.
Item 2(e)(45)	Reimbursable modification escrow and corporate advances (capitalized). Provide the total amount of escrow and corporate advances made by the servicer as of the time of the loan modification. Corporate advances are amounts paid by the servicer which may include foreclosure expenses, attorney fees, bankruptcy fees, insurance, and so forth.	Number	Modification.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(e)(46)	Reimbursable modification servicing fee advances (capitalized). Provide the total amount of servicing fees for delinquent payments that has been advanced by the servicer at the time of the loan modification.	Number	Modification.
Item 2(e)(47)	HAMP indicator. Indicate yes or no whether the loan was modified under the terms of the Home-Affordable Modification Plan (HAMP).	1 = Yes 2 = No	Modification.
Item 2(e)(47)(i)	HAMP: Loan participation end date. Provide the date upon which the last principal and interest payment is due during the 60-month participation of the U.S. Treasury and FNMA in the loan modification.	Date	Modification.
Item 2(e)(47)(ii)	HAMP: Loan modification incentive termination date. Provide the date upon which obligor participation in the program is terminated because the borrower has defaulted or re-defaulted.	Date	Modification.
Item 2(e)(47)(iii)	HAMP: Obligor pay-for-performance success payments. Provide the amount paid to the servicer from U.S. Treasury/FNMA that reduces the principal balance of the interest bearing portion of the loan as the obligor stays current after modification.	Number	Modification.
Item 2(e)(47)(iv)	HAMP: Onetime bonus incentive eligibility. Indicate yes or no whether the loan qualifies for the one-time bonus incentive payment of $1,500.00 payable to the mortgage holder subject to certain de minimis constraints.	1 = Yes 2 = No	Modification.
Item 2(e)(47)(v)	HAMP: Onetime bonus incentive amount. Indicate whether mortgage holder has or will receive $1,500 paid to mortgage holders for modifications made while a borrower is still current on mortgage payments.	Number	Modification.
Item 2(e)(47)(vi)	HAMP: Monthly payment reduction cost share. Provide the amount of the subsidized payment from Treasury/FNMA during the current period to reimburse the investor for one half of the cost of reducing the monthly payment from 38% to 31% front-end DTI.	Number	Modification.
Item 2(e)(47)(vii)	HAMP: Administrative fees associated with participating in the program. Provide the amount of the fees incurred by the servicer while administering this program, as allowed by the governing documents with investors.	Number	Modification.
Item 2(e)(47)(viii)	HAMP: Current asset balance including deferred amount. Provide the sum amount of the current asset balance plus only the principal portion of the deferred amount.	Number	Modification.
Item 2(e)(47)(ix)	HAMP: Scheduled ending balance including deferred amount. Provide the sum amount of the scheduled ending balance field already supplied on the file plus only the principal portion of the deferred amount.	Number	Modification.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(e)(47)(x)	HAMP: Home price depreciation payments. Provide the amount payable to mortgage holders to partially offset probable losses from home price declines.	Number	Modification.
Item 2(f)(1)	Forbearance plan or trial modification start date. Provide the date on which a Forbearance Plan or Trial Modification started.	Date	Loss mitigation—Forbearance.
Item 2(f)(2)	Forbearance plan or trial modification scheduled end date. Provide the date on which a forbearance plan or trial modification is scheduled to end.	Date	Loss mitigation—Forbearance.
Item 2(g)(1)	Repayment plan start date. Provide the date on which a repayment plan started.	Date	Loss mitigation—Repayment Plan.
Item 2(g)(2)	Repayment plan scheduled end date. Provide the date on which a repayment plan is scheduled to end.	Date	Loss mitigation—Repayment Plan.
Item 2(g)(3)	Repayment plan violated date. Provide the date on which the obligor ceased complying with the terms of a repayment plan.	Date	Loss mitigation—Repayment Plan.
Item 2(h)	Deed-in-lieu date. If the type of loss mitigation is deed-in-lieu, provide the date on which a title was transferred to the servicer pursuant to a deed-in-lieu-of-foreclosure arrangement. Deed-in-lieu refers to the transfer of title from an obligor to the lender to satisfy the mortgage debt and avoid foreclosure.	Date	Loss mitigation—Deed-in-Lieu.
Item 2(i)	Short sale accepted offer amount. If the type of loss mitigation is short sale, provide the amount accepted for a short sale. Short Sale refers to the process in which a servicer works with a delinquent obligor to sell the property prior to the foreclosure sale.	Amount	Loss mitigation—Short Sale.
Item 2(j)	Information related to loss mitigation exit. If the loan has exited loss mitigation efforts during the reporting period, provide the following addition information:	Text	Loss mitigation—Exit.
Item 2(j)(1)	Loss mitigation exit date. Provide the date on which the servicer deems a loss mitigation effort to have ended.	Date	Loss mitigation—Exit.
Item 2(j)(2)	Loss mitigation exit code. Indicate the code that describes the reason the loss mitigation effort ended.	1 = Completed/satisfied 2 = Cancelled/failed 3 = Denied 99 = Unknown	Loss mitigation—Exit.
Item 2(k)(1)	Attorney referral date. Provide the date on which the loan was referred to a foreclosure attorney.	Date	Foreclosure.
Item 2(k)(2)	Date of first legal action. Provide the date on which legal foreclosure action was taken.	Date	Foreclosure.
Item 2(k)(3)	Expected foreclosure sale date. Provide the expected date if known on which the foreclosure sale will take place.	Date	Foreclosure.
Item 2(k)(4)	Foreclosure sale scheduled date. Provide the date on which the sale has been set to occur either by the court or Trustee.	Date	Foreclosure.
Item 2(k)(5)	Foreclosure sale date. Provide the date on which a foreclosure sale occurs.	Date	Foreclosure.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(k)(6)	Foreclosure delay reason. Indicate the code that describes the reason for delay within the foreclosure process.	1 = No delay 2 = Loss mitigation delay 3 = BK delay 4 = Title/document delay 5 = Contestation delay 6 = Court/procedural delay 7 = Loss mitigation/servicer delay 8 = Statutory moratorium 9 = Disaster relief/other 10 = Relief Act 99 = Unavailable	Foreclosure.
Item 2(k)(7)	Sale valid date. If state law provides for a period for confirmation, ratification, redemption or upset period, provide the date of the end of the period.	Date	Foreclosure.
Item 2(k)(8)	Foreclosure bid amount. Provide the amount bid by the servicer at the foreclosure sale.	Number	Foreclosure.
Item 2(k)(9)	Foreclosure exit date. If the loan exited foreclosure during the current period or first available subsequent period, provide the date on which the loan exited foreclosure.	Date	Foreclosure.
Item 2(k)(10)	Foreclosure exit reason. If the loan exited foreclosure during the current period or first available subsequent period, indicate the code that describes the reason the foreclosure proceeding ended.	1 = Third-party sale 2 = REO 3 = Loss mitigation 4 = Bankruptcy 5 = Reinstatement 6 = Charge-off 7 = Paid in full 8 = Foreclosure started in error 9 = Redeemed 99 = Unknown	Foreclosure.
Item 2(k)(11)	Third-party sale proceeds. If the reason for the end of foreclosure proceeding is third-party sale, provide the amount for which the property was sold.	Number	Foreclosure.
Item 2(k)(12)	Judgment date. In a judicial foreclosure state, if a judgment on the foreclosure has occurred, provide the date on which a court granted the judgment in favor of the creditor.	Date	Foreclosure.
Item 2(k)(13)	Publication date. Provide the date on which the publication of trustee's sale information is published in the appropriate venue.	Date	Foreclosure.
Item 2(k)(14)	NOI Date. If a notice of intent (NOI) has been sent, provide the date on which the Servicer sent the NOI correspondence to the obligor informing the obligor of the acceleration of the loan and pending initiation of foreclosure action.	Date	Foreclosure.
Item 2(l)(1)	Most recent REO list date. Provide the most recent listing date for the REO.	Date	REO.
Item 2(l)(2)	Most recent REO list price. Provide the amount of the current listing price for the REO.	Number	REO.
Item 2(l)(3)	Accepted REO offer amount. If a REO offer has been accepted, provide the amount accepted for the REO sale.	Number	REO.
Item 2(l)(4)	Accepted REO offer date. If a REO offer has been accepted, provide the date on which the REO sale amount was accepted.	Date	REO.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(l)(5)	REO Original list date. Provide the original list date for the REO property.	Date	REO.
Item 2(l)(6)	REO Original list price. Provide the amount of the original listing price for the REO.	Number	REO.
Item 2(l)(7)	Actual REO sale closing date. If a REO sale is closed, provide the date of the closing of the REO sale.	Date	REO.
Item 2(l)(8)	Gross liquidation proceeds. If a REO sale has closed, provide the gross amount due to the issuing entity as reported on Line 420 of the HUD–1 settlement statement.	Number	REO.
Item 2(l)(9)	Net sales proceeds. If a REO sale has closed, provide the net proceeds received from the escrow closing (before servicer reimbursement).	Number	REO.
Item 2(l)(10)	Current monthly loss amount passed to issuing entity. Provide the cumulative loss amount passed through to the issuing entity during the current period, including subsequent loss adjustments and any forgiven principal as a result of a modification that is passed through to the issuing entity.	Number	REO.
Item 2(l)(11)	Cumulative total loss amount passed to issuing entity. Provide the loss amount passed through to the issuing entity to date, including any forgiven principal as a result of a modification that is passed through to the issuing entity.	Number	REO.
Item 2(l)(12)	Subsequent recovery amount. Provide the current period amount recovered subsequent to the initial gain/loss recognized at the time of liquidation.	Number	REO.
Item 2(l)(13)	Eviction start date. If an eviction process has begun, provide the date on which the servicer initiates eviction of the obligor.	Date	REO.
Item 2(l)(14)	Eviction completed date. If an eviction process has been completed, provide the date on which the court revoked legal possession of the property from the obligor.	Date	REO.
Item 2(l)(15)	REO exit date. If a loan exited REO during the current period or first available subsequent period, provide the date on which the loan exited REO status.	Date	REO.
Item 2(l)(16)	REO exit reason. If a loan exited REO during the current period or first available subsequent period, indicate the code that describes the reason the loan exited REO status.	1 = REO Sale Completed 2 = Bankruptcy 3 = Loss Mitigation 4 = Litigation 5 = Rescinded 99 = Unknown	REO.
Item 2(m)(1)(i)	Interest advanced. Provide the amount of interest advanced that is reimbursed to the servicer.	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(ii)	UPB at liquidation. Provide the amount of actual unpaid principal balance (UPB) at the time of liquidation.	Number	Loss Claims on Liquidated Loans.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(m)(1)(iii)	Servicing fees claimed. Provide the amount of accrued servicing fees (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(iv)	Attorney fees claimed. Provide the amount of total attorney fees advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(v)	Attorney cost claimed. Provide the amount of total attorney cost advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(vi)	Property taxes claimed. Provide the amount of real property taxes advanced by the servicer to be recovered (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(vii)	Property maintenance. Provide the amount of total property maintenances such as lawn care, trash removal, snow removal, etc., (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(viii)	Insurance premiums claimed. Provide the amount of advances paid by the servicer for any type of insurance (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(ix)	Utility expenses claimed. Provide the amount of utilities advanced paid by the servicer (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(x)	Appraisals or BPO expenses claimed. Provide the amount of cost advanced by the servicer for appraisal and/or broker's professional opinion (BPO) expenses (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(xi)	Property inspection expenses claimed. Provide the amount of cost advanced by the servicer for property inspection expenses (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(xii)	Miscellaneous expenses claimed. Provide the amount of miscellaneous expenses advanced by the servicer that do not fit into any other category (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(xiii)	Pre-securitization servicing advances claimed. Provide the amount of unreimbursed advances by the servicer prior to the securitization of the deal (claimed at time of servicer reimbursement after liquidation).	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(xiv)	REO management fees. If the loan is in REO, provide the amount of REO management fees (including auction fees).	Number	Loss Claims on Liquidated Loans.

TABLE 12—SCHEDULE L–D ITEM 2. RESIDENTIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 2(m)(1)(xv)	Cash for keys/cash for deed. Provide the amount of the payment to the obligor or tenants in exchange for vacating the property, or the payment to the obligor to accelerate a deed-in-lieu process or complete a redemption period.	Number	Loss Claims on Liquidated Loans.
Item 2(m)(1)(xvi)	Performance incentive fees. Provide the amount of payment to the servicer in exchange for carrying out a deed-in-lieu or short sale.	Number	Loss Claims on Liquidated Loans.
Item 2(m)(2)(i)	Positive escrow balance. Provide the amount of escrow balance at the time of loss claim (report only if positive).	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(ii)	Suspense balance. Provide the total dollar amount held in suspense at the time of liquidation.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(iii)	Hazard claims proceeds. Provide the amount of hazard loss proceeds collected.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(iv)	Pool insurance claim proceeds. Provide the amount of pool claim proceeds collected.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(v)	Private mortgage insurance claim proceeds. Provide the amount of private mortgage insurance claim proceeds collected.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(vi)	Property tax refunds. Provide the amount of property tax refunds collected.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(2)(vii)	Insurance refunds. Provide the amount of insurance premium refunds collected.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(3)	Bankruptcy loss amount. Provide the amount of any Realized Loss resulting from a deficient valuation or debt service reduction.	Number	Loss Recovery on Liquidated Loans.
Item 2(m)(4)	Special hazard loss amount. Provide the amount of any realized loss suffered by a mortgaged property that is classified as a special hazard in the governing documents.	Number	Loss Recovery on Liquidated Loans.
Item 2(n)(1)	MI claim filed date. Provide the date on which the servicer filed an MI claim.	Date	Mortgage Insurance Claims.
Item 2(n)(2)	MI claim amount. Provide the amount of the MI claim filed by the servicer.	Number	Mortgage Insurance Claims.
Item 2(n)(3)	MI paid date. If a MI claim has been paid, provide the date on which the MI company paid the MI claim.	Date	Mortgage Insurance Claims.
Item 2(n)(4)	MI claim paid amount. If a MI claim has been decided, provide the amount of the claim paid by the MI company.	Number	Mortgage Insurance Claims.
Item 2(n)(5)	MI claim denied/rescinded date. If a MI claim has been denied or rescinded, provide the final MI denial date after all servicer appeals.	Date	Mortgage Insurance Claims.
Item 2(n)(6)	Marketable title transferred to MI date. If the deed of a property has been sent to the MI company, provide the date of actual title conveyance to the MI company.	Date	Mortgage Insurance Claims.

TABLE 13—SCHEDULE L–D ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(a)(1)	Current remaining term. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General Information.
Item 3(a)(2)	Number of properties. Provide the current number of properties which serve as mortgage collateral for the loan.	Number	General Information.
Item 3(a)(3)	Current hyper-amortizing date. Provide the current anticipated repayment date, after which principal and interest may amortize at an accelerated rate, and/or interest expense to mortgagor increases substantially as per the loan documents.	Date	ARM.
Item 3(a)(4)(i)	Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.	%	ARM.
Item 3(a)(4)(ii)	Next interest rate change date. Provide the next date that the interest rate is scheduled to change.	Date	ARM.
Item 3(a)(4)(iii)	Payment at next reset. Provide the principal and interest payment due after the next scheduled interest rate change.	Number	ARM.
Item 3(a)(4)(iv)	Next payment change date. Provide the next date that the amount of scheduled principal and/or interest is scheduled to change.	Date	ARM.
Item 3(a)(5)	Negative amortization/deferred interest capitalized amount. Indicate the amount for the current reporting period that represents negative amortization or deferred interest that is added to the principal balance.	Number	Negative Amortization.
Item 3(a)(5)(i)	Cumulative deferred interest. Indicate the cumulative deferred interest for the current and prior reporting cycles net of any deferred interest collected.	Number	Negative Amortization.
Item 3(a)(5)(ii)	Deferred interest collected. Indicate the amount of deferred interest collected in the current reporting period.	Number	Negative Amortization.
Item 3(b)	Workout strategy. Indicate the code that best describes the steps being taken to resolve the loan.	1 = Modification 2 = Foreclosure 3 = Bankruptcy 4 = Extension 5 = Note sale 6 = DPO 7 = REO 8 = Resolved 9 = Pending return to master servicer 10 = Deed-in-lieu of foreclosure 11 = Full payoff 12 = Reps and warranties 13 = To be determined 98 = Other	Loss Mitigation.
Item 3(c)(1)	Date of last modification. Provide the date of the most recent modification. A modification includes any material change to the loan document.	Date	Modification.
Item 3(c)(2)	Modification note rate. Indicate the new initial interest rate (post-modification).	%	Modification.

TABLE 13—SCHEDULE L–D ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(c)(3)	Rate at next reset. Provide the annualized gross interest rate that will be used to determine the next scheduled interest payment.	%	Modification.
Item 3(c)(4)	Modified payment amount. Indicate the new initial principal and interest payment amount (post-modification).	Number	Modification.
Item 3(c)(5)	Modified maturity date. Indicate the new maturity date of the loan (post modification).	Date	Modification.
Item 3(c)(6)	Modified amortization period. Indicate the new amortization period in months (post-modification).	Date	Modification.
Item 3(d)(1)	Property name. Provide the name of the property which serves as mortgage collateral. If the property has been defeased, then populate with "defeased."	Text	General Information.
Item 3(d)(2)	Property geographic location. Provide the zip code the location of the property.	Number	General Information.
Item 3(d)(3)	Property Type. Indicate the code that describes how the property is being used.	1 = Multifamily 2 = Retail 3 = HealthCare 4 = Industrial 5 = Warehouse 6 = Mobile home park 7 = Office 8 = Mixed use 9 = Lodging 10 = Self storage 11 = Securities 12 = Cooperative housing 98 = Other	General Information.
Item 3(d)(4)	Net rentable square feet. Provide the net rentable square feet area of a property.	Number	General Information.
Item 3(d)(5)	Number of units/beds/rooms. Provide the number of units/beds/rooms of a property.	Number	General Information.
Item 3(d)(6)	Year built. Provide the year that the property was built.	Number	General Information.
Item 3(d)(7)	Valuation amount. The valuation amount of the property as of the valuation date.	Number	General Information.
Item 3(d)(8)	Valuation date. The date the valuation amount was determined.	Date	General Information.
Item 3(d)(9)	Physical occupancy. Provide the percentage of rentable space occupied by tenants. Should be derived from a rent roll or other document indicating occupancy.	%	General Information.
Item 3(d)(10)	Property status. Specify the code that describes the status of the property.	1 = In foreclosure 2 = REO 3 = Defeased 4 = Partial release 5 = Substituted 6 = Same as at contribution	General Information.
Item 3(d)(11)	Defeasance status. Indicate the code that describes the defeasance status. A defeasance option is when an obligor may substitute other income-producing property for the real property without pre-paying the existing loan.	1 = Portion of loan previously defeased. 2 = Full defeasance 3 = No defeasance occurred 4 = Defeasance not allowable	General Information.
Item 3(d)(12)(i)	Financial reporting begin date. Specify the beginning date of the financial information presented in response to this subparagraph.	Date	General Information.

TABLE 13—SCHEDULE L–D ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(d)(12)(ii)	Financial period reporting end date. Specify the ended date of the financial information presented in response to this subparagraph.	Date	General Information.
Item 3(d)(12)(iii)	Revenue. Provide the total underwritten revenue from all sources for a property.	Number	General Information.
Item 3(d)(12)(iv)	Operating expenses. Provide the total operating expenses. Include real estate taxes, insurance, management fees, utilities, and repairs and maintenance.	Number	General Information.
Item 3(d)(12)(v)	Net operating income. Provide the total revenues less total underwritten operating expenses prior to application of mortgage payments and capital items for all properties.	Number	General Information.
Item 3(d)(12)(vi)	Net cash flow. Provide the total revenue less the total operating expenses and capital costs.	Number	General Information.
Item 3(d)(12)(vii)	NOI/NCF indicator. Indicate the code that best describes how net operating income and net cash flow were calculated.	1 = Calculated using CMSA Standard 2 = Calculated using a definition given in the pooling and servicing agreement 3 = Calculated using the underwriting method	General Information.
Item 3(d)(12)(viii)	DSCR (NOI). Provide the ratio of net operating income to debt service during the reporting period.	Number	General Information.
Item 3(d)(12)(ix)	DSCR (NCF). Provide the ratio of net cash flow to debt service during the reporting period.	Number	General Information.
Item 3(d)(12)(x)	DSCR indicator. Indicate the code that describes how the debt service coverage ratio was calculated.	1 = Average—Not all properties received financials, servicer allocates debt service only to properties where financial statements are received.. 2 = Consolidated—All properties reported on one "rolled up" financial statement from the borrower 3 = Full—All financial statements collected for all properties 4 = None collected—No financials were received 5 = Partial—Not all properties received financial statements, servicer to leave empty 6 = "Worst Case"—Not all properties received financial statements, servicer allocates 100% of debt service to all properties where financial statements are received.	General Information.
Item 3(d)(13)	Largest tenant. Identify the tenant that leases the largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information.
Item 3(d)(14)	Square feet of largest tenant. Provide total square feet lease by the largest tenant.	Number	General Information.
Item 3(d)(15)	Lease expiration of largest tenant. Provide the date of lease expiration for the largest tenant.	Date	General Information.
Item 3(d)(16)	Second largest tenant. Identify the tenant that leases the second largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information.
Item 3(d)(17)	Square feet of second largest tenant. Provide total square feet leased by the second largest tenant.	Number	General Information.

TABLE 13—SCHEDULE L–D ITEM 3. COMMERCIAL MORTGAGES ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 3(d)(18)	Lease expiration of second largest tenant. Provide the date of lease expiration for the second largest tenant.	Date	General Information.
Item 3(d)(19)	Third largest tenant. Identify the tenant that lease the third largest square feet of the property (based on the most recent annual lease rollover review).	Text	General Information.
Item 3(d)(20)	Square feet of third largest tenant. Provide total square feet leased by the third largest tenant.	Amount	General Information.
Item 3(d)(21)	Lease expiration of third largest tenant. Provide the date of lease expiration for the third largest tenant.	Date	General Information.

TABLE 14—SCHEDULE L–D ITEM 4. AUTOMOBILE LOAN ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 4(a)	Subvented. Indicate yes or no as the whether a form of subsidy is received on the loan, such as cash incentives or favorable financing for the obligor.	1 = Yes 2 = No	General Information.
Item 4(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	General Information.
Item 4(c)	Repossessed. Indicate yes or no whether the vehicle has been repossessed. If the vehicle has been repossessed, provide the following additional information.	1 = Yes 2 = No	General Information.
Item 4(c)(1)	Repossession proceeds. Provide the total amount of proceeds received on disposition.	Number	Repossession.
Item 4(c)(2)	Repossession fees. Provide the amount of fees paid in connection with the repossession and disposition of the vehicle.	Number	Repossession.

TABLE 15—SCHEDULE L–D ITEM 5. AUTOMOBILE LEASE ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 5(a)	Subvented. Indicate yes or no as to whether a form of subsidy is received on the loan, such as cash incentives or favorable financial for the obligor.	1 = Yes 2 = No	General Information.
Item 5(b)	Updated residual value. If the residual value of the vehicle was updated during the reporting period, provide the updated value.	Number	General Information.
Item 5(c)	Source of update residual value. Specify the code that describes the source of the residual value.	1 = Black Book 2 = Automotive lease guide 98 = Other	General Information.
Item 5(d)	Termination indicator. Specify the code that describes the reason why the lease was terminated.	1 = Scheduled termination 2 = Early termination due to bankruptcy 3 = Involuntary repossession 4 = Voluntary repossession 5 = Insurance payoff 6 = Customer payoff 7 = Dealer purchase 98 = Other	Termination.
Item 5(e)	Excess wear and tear received. Specify the amount of excess wear and tear fees received upon return of the vehicle.	Number	Termination.

TABLE 15—SCHEDULE L–D ITEM 5. AUTOMOBILE LEASE ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 5(f)	Excess mileage received. Specify the amount of excess mileage fees received upon return of the vehicle.	Number	Termination.
Item 5(g)	Sales proceeds. If the vehicle has been sold, specify the amount of the proceeds received on sale of the vehicle.	Number	Termination.
Item 5(h)	Lease term extension indicator. Indicate whether the lease term has been extended from the original term.	1 = Yes 2 = No	General Information.
Item 5(i)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Losses.

TABLE 16—SCHEDULE L–D ITEM 6. EQUIPMENT LOAN ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 6(a)	Liquidation proceeds. If the loan has been liquidated. Specify the amount of proceeds received.	Number	Liquidated Asset.
Item 6(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Charged-off.

TABLE 17—SCHEDULE L–D ITEM 7. EQUIPMENT LEASE ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 7(a)	Updated residual value. If the residual value of the equipment was updated during the reporting period, provide the updated value.	Number	General Information.
Item 7(b)	Source of updated residual value. Specify the code that describes the source of the residual value.	1 = Internal 2 = External consultant 3 = Other	General Information.
Item 7(c)	Termination indicator. Specify the code that describes the reason why the lease was terminated	1 = Scheduled termination 2 = Early termination due to bankruptcy 3 = Involuntary repossession 4 = Voluntary repossession 5 = Insurance payoff 6 = Customer payoff 7 = Dealer purchase 98 = Other	General Information.
Item 7(d)	Liquidation proceeds. If the asset has been liquidated, specify the amount of proceeds received.	Number	Liquidated Asset.
Item 7(e)	Amounts recovered. If the asset was previously charged-off, specify any amounts received after charge-off.	Number	Liquidated Asset.

TABLE 18—SCHEDULE L–D ITEM 8. STUDENT LOAN ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 8(a)	Current obligor payment status. Indicate the code describing whether the obligor payment status is in-school, grace period, deferral, forbearance or repayment.	1 = In-school 2 = Grace period 3 = Deferral 4 = Forbearance 5 = Repayment	General Information.
Item 8(b)	Capitalized interest. Specify the amount of interest accrued to be capitalized during the reporting period.	Number	General Information.

TABLE 18—SCHEDULE L–D ITEM 8. STUDENT LOAN ITEM REQUIREMENTS—Continued

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 8(c)(1)	Principal collections from guarantor. Provide the amount of principal received from the guarantor during this reporting period.	Number	Guarantor Information.
Item 8(c)(2)	Interest claims received from guarantor. Provide the amount of interest claims received from guarantor during this reporting period.	Number	Guarantor Information.
Item 8(c)(3)	Claim in process. Indicate yes or no whether a claim is in process.	1 = Yes 2 = No	Guarantor Information.
Item 8(c)(4)	Claim outcome. Indicate yes or no whether a claim has been rejected.	1 = Yes 2 = No	Guarantor Information.

TABLE 19—SCHEDULE L–D ITEM 9. FLOORPLAN FINANCING ITEM REQUIREMENTS

Proposed item No.	Proposed title and definition	Proposed response	Proposed category of information
Item 9(a)	Liquidation proceeds. If the loan has been liquidated, specify the amount of proceeds received.	Number	Liquidated Asset.
Item 9(b)	Amounts recovered. If the loan was previously charged-off, specify any amounts received after charge-off.	Number	Liquidated Asset.
Item 9(c)(1)	Credit score type. Specify the type of the standardized credit score used to evaluate the obligor.	Text	General Information.
Item 9(c)(2)	Most recent credit score. Provide the most recent credit score of the obligor.	Text or Number	General Information.
Item 9(c)(3)	Most recent credit score date. Provide the date of the most recently obtained credit score of the obligor.	Date	General Information.

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Federal Register

Monday,
May 3, 2010

Part III

Federal Deposit Insurance Corporation

12 CFR Part 327
Assessments; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD57

Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC proposes to amend our regulations to revise the assessment system applicable to large institutions to better differentiate institutions by taking a more forward-looking view of risk; to better take into account the losses that the FDIC will incur if an institution fails; to revise the initial base assessment rates for all insured depository institutions; and to make technical and other changes to the rules governing the risk-based assessment system.

DATES: Comments must be received on or before 60 days after publication.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. Comments will be posted only to the extent practicable and, in some instances, the FDIC may post summaries of categories of comments, with the comments themselves available in the FDIC's reading room. Comments will be posted at: *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided with the comment.

FOR FURTHER INFORMATION CONTACT: Lisa Ryu, Chief, Large Bank Pricing Section, Division of Insurance and Research, (202) 898–3538; Heather L. Etner, Financial Analyst, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–6796; Robert L. Burns, Chief, Exam Support and Analysis, Division of Supervision and Consumer Protection (704) 333–3132 x4215; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960.

SUPPLEMENTARY INFORMATION:

I. Background

The Reform Act

On February 8, 2006, the President signed the Federal Deposit Insurance Reform Act of 2005 into law; on February 15, 2006, he signed the Federal Deposit Insurance Reform Conforming Amendments of 2005 (collectively, the Reform Act).[1] The Reform Act, among other things, gives the FDIC, through its rulemaking authority, the opportunity to better price deposit insurance for risk.[2]

The Federal Deposit Insurance Act, as amended by the Reform Act, requires that the assessment system be risk-based and allows the FDIC to define risk broadly. It defines a risk-based system as one based on an institution's probability of causing a loss to the Deposit Insurance Fund (the Fund or the DIF) due to the composition and concentration of the institution's assets and liabilities, the likely amount of any such loss, and the revenue needs of the DIF. The Reform Act leaves in place the statutory provision allowing the FDIC to "establish separate risk-based assessment systems for large and small members of the Deposit Insurance Fund."[3] But the Reform Act provides that "[n]o insured depository institution shall be barred from the lowest-risk category solely because of size."[4]

2006 Assessments Rule

On November 30, 2006, pursuant to the requirements of the Reform Act, the FDIC adopted by regulation (the 2006 assessments rule) an assessment system that placed insured depository institutions into risk categories (Risk Category I, II, III or IV), depending upon supervisory ratings and capital levels.[5] Within Risk Category I, the 2006 assessments rule created different assessment systems for large and small institutions that combined supervisory ratings with other risk measures to further differentiate risk and determine assessment rates.[6]

To determine assessment rates for large Risk Category I institutions that had a long-term debt issuer rating, the 2006 assessments rule combined the institution's weighted average CAMELS component rating and any current long-term debt issuer rating or ratings assigned by the major U.S. rating agencies (the debt ratings method). For large institutions that did not have a long-term debt issuer rating, the rule set initial assessment rates using a financial ratios method, which combined the weighted average CAMELS component rating and certain financial ratios. (This method was also applied to all small institutions.) The 2006 assessments rule allowed the FDIC to adjust initial assessment rates for large Risk Category I institutions to ensure that the relative levels of risk posed by these institutions were consistently reflected in assessment rates; the adjustment is known as the large bank adjustment.[7] The FDIC provided additional detail on the calculation of the large bank adjustment in its Guidelines for Large Institutions and Insured Foreign Branches in Risk Category I (the large bank guidelines).[8]

2009 Assessments Rule

Effective April 1, 2009, the FDIC amended its assessments rule (the 2009 assessments rule) to create the current assessment system. Under this assessment system, the initial base assessment rate for a Risk Category I institution is determined by either the financial ratios method applicable to all small institutions or, for institutions with at least one long-term debt rating, by a new large bank method.[9] The new

[1] Federal Deposit Insurance Reform Act of 2005, Public Law 109–171, 120 Stat. 9; Federal Deposit Insurance Conforming Amendments of 2005, Public Law 109–173, 119 Stat. 3601.

[2] Section 2109(a)(5) of the Reform Act. Section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

[3] Section 7(b)(1)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(1)(D)).

[4] Section 2104(a)(2) of the Reform Act amending Section 7(b)(2)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(2)(D)).

[5] 71 FR 69282. (Nov. 30, 2006). The FDIC also adopted several other final rules implementing the Reform Act, including a final rule on operational changes to part 327. 71 FR 69270 (Nov. 30, 2006).

[6] The 2006 final rule defined a large institution as an institution (other than an insured branch of a foreign bank) with $10 billion or more in assets as of December 31, 2006 (although an institution with at least $5 billion in assets could request treatment as a large institution). If, after December 31, 2006, an institution classified as small reports assets of $10 billion or more in its report of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning in the following quarter. If, after December 31, 2006, an institution classified as large reports assets of less than $10 billion in its report of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter. 12 CFR 327.8(g) and (h) (2009) and 327.9(d)(6) (2009).

[7] 71 FR 69282, 69292–69294 (Nov. 30, 2006).

[8] 72 FR 27122 (May 14, 2007).

[9] The financial ratios method also applies to large institutions without at least one long-term debt rating. The 2009 assessments rule added a new measure—the adjusted brokered deposit ratio—to the financial ratios that were considered under the

large bank method incorporates a financial ratios score. For a large institution in Risk Category I with a long-term debt issuer rating, the initial base assessment rate combines the institution's weighted average CAMELS component rating, its average long-term debt issuer ratings, and its financial ratios score, each equally weighted (the large bank method). The 2009 assessments rule also increased the maximum large bank adjustment of the initial base assessment rate from 0.50 basis points to 1 basis point.[10]

Initial base assessment rates as of April 1, 2009, are set forth in Table 1 below.

TABLE 1—INITIAL BASE ASSESSMENT RATES AS OF APRIL 1, 2009

	Risk category				
	I*		II	III	IV
	Minimum	Maximum			
Annual Rates (in basis points)	12	16	22	32	45

* Rates for institutions that do not pay the minimum or maximum rate will vary between these rates.

The 2009 assessments rule provided for adjustments to the initial base assessment rate for institutions in all risk categories. An institution's total base assessment rate can vary from its initial base assessment rate as the result of an unsecured debt adjustment and a secured liability adjustment. The unsecured debt adjustment lowers an institution's initial base assessment rate using its ratio of long-term unsecured debt (and, for small institutions, certain amounts of Tier 1 capital) to domestic deposits.[11] The secured liability adjustment increases an institution's initial base assessment rate if the institution's ratio of secured liabilities to domestic deposits is greater than 25 percent (the secured liability adjustment).[12] In addition, institutions in Risk Categories II, III and IV are subject to an adjustment for large levels of brokered deposits (the brokered deposit adjustment).[13]

After applying all possible adjustments, the minimum and maximum total base assessment rates for each risk category under the 2009 assessments rule are set out in Table 2 below.

TABLE 2—INITIAL AND TOTAL BASE ASSESSMENT RATES

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	12–16	22	32	45
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–8	0–11	0–16	0–22.5
Brokered deposit adjustment	.....	0–10	0–10	0–10
Total Base Assessment Rate	7–24bp	17–43bp	27–58bp	40–77.5bp

All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates.

II. Overview of the Proposal

The FDIC proposes to revise the assessment system applicable to large institutions to better capture risk at the time an institution assumes the risk, to better differentiate institutions during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and to better take into account the losses that the FDIC may incur if an institution fails.

The FDIC has carefully considered the measurements that should be used to assess large banks' risk. The proposal includes quantitative measures that are readily available and statistically significant in predicting an institution's long-term performance. The FDIC believes that other considerations—such as stress testing, underwriting characteristics, and risk management practices—are also important in the risk assessment of large institutions, and they should be factored into the risk-based assessment system. While the FDIC has already identified some key metrics for these additional considerations, the FDIC is seeking further input in a request for comments included in this proposed rulemaking. The FDIC also anticipates that any final rule issued pursuant to this notice of proposed rulemaking would be followed by discussions with the industry on ways to improve the system adopted, as well as coordination with other regulators. Ultimately, the FDIC anticipates a further round of rulemaking may be needed to improve the large bank assessment system adopted pursuant to this rulemaking.

The FDIC proposes to eliminate risk categories for large institutions to allow the FDIC to draw finer distinctions among large institutions based upon the risk that they pose. For all large institutions, the FDIC proposes to eliminate use of long-term debt issuer ratings. The FDIC has found that debt issuer ratings, particularly for the largest institutions, do not respond quickly to an institution's changing risk profile. The FDIC proposes to continue to rely

2006 assessments rule. The adjusted brokered deposit ratio measures the extent to which certain brokered deposits are used to fund rapid asset growth. The adjusted brokered deposit ratio excludes deposits that a Risk Category I institution receives through a deposit placement network on a reciprocal basis, such that: (1) For any deposit received, the institution (as agent for depositors) places the same amount with other insured depository institutions through the network; and (2) each member of the network sets the interest rate to be paid on the entire amount of funds it places with other network members (reciprocal deposits).

[10] 74 FR 9525, 9535–9536 (Mar. 4, 2009).

[11] Unsecured debt excludes debt guaranteed by the FDIC under its Temporary Liquidity Guarantee Program.

[12] The initial base assessment rate cannot increase more than 50 percent as a result of the secured liability adjustment.

[13] 74 FR 9522, 9541 (Mar. 4, 2009).

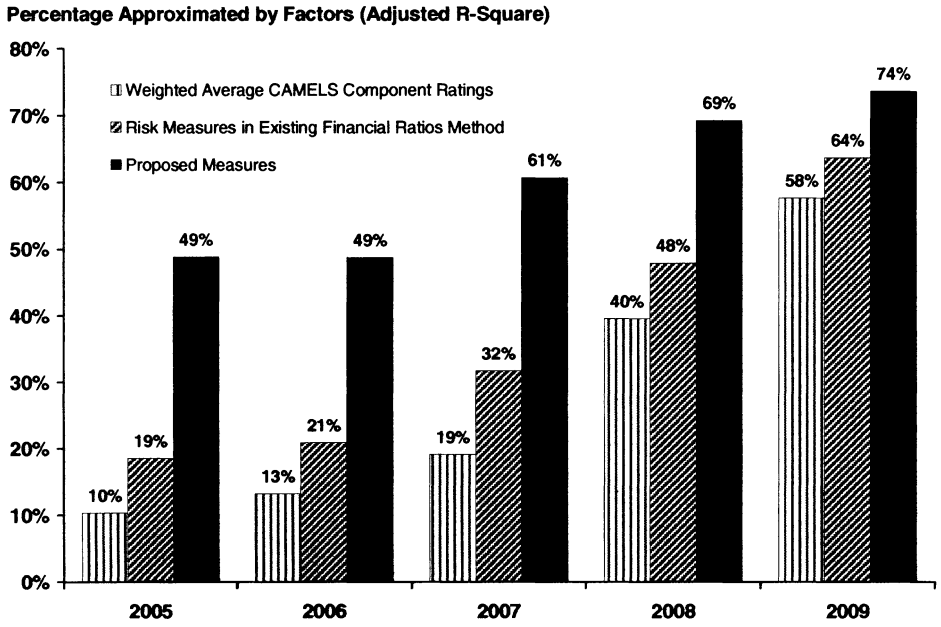
upon CAMELS ratings and financial measures to determine assessment rates.[14]

The FDIC proposes to combine CAMELS ratings and certain financial measures into two scorecards—one for most large institutions and another for large institutions that are structurally and operationally complex or that pose unique challenges and risks in case of failure (Highly Complex Institutions). Each scorecard would consist of a performance component, which would measure an institution's financial performance and its ability to withstand stress, and a loss severity component, which would correspond to the level of potential losses in case of failure. The data underlying these measures are readily available. Most of the data are publicly available, but some are gathered during the examination process. Under the proposal, the FDIC would have the ability to adjust each component where necessary to produce accurate relative risk rankings.

Because some of the financial measures that the FDIC is proposing focus on long-term risk, they should mitigate the pro-cyclicality of the current system. Over the long term, institutions that pose higher long-term risk will pay higher assessments when they assume these risks—usually during economic expansions—rather than facing large assessment increases when conditions deteriorate. In so doing, they should provide incentives for institutions to avoid excessive risk during economic expansions.

As shown in Chart 1, the proposed measures were useful in predicting long-term performance of large institutions over the 2005 to 2009 period. The chart contrasts the predictive values of the proposed measures with weighted-average CAMELS component ratings and with the existing financial ratios method. (The financial ratios method is based on a statistical model that predicts downgrades of small banks within 12 months, but the method also applies to large Risk Category I banks.) The proposed measures predict the FDIC's view, based on its experience and judgment, of the proper rank ordering of risk for large institutions do significantly better than the other two methods and, thus, better than the current system used for most large Risk Category I institutions, which combines weighted-average CAMELS composite scores, the financial ratios method and long-term debt issuer ratings. (As noted above, debt issuer ratings, particularly for the largest institutions, do not respond quickly to an institution's changing risk profile.) For example, in 2006, the proposed measures would have predicted the FDIC's expert judgment-based risk ranking of large institutions as of year-end 2009 nearly two and one-half times better than the risk measures in the existing financial ratios method, which applies to large banks without debt ratings.

Various Measures' Ability to Predict Current Expert Judgment Risk Ranking[15]



The FDIC also proposes to alter assessment rates applicable to all insured depository institutions to ensure that the revenue collected under the new assessment system would approximately equal that under the existing assessment system and also to ensure that the lowest rate applicable to both small and large institutions would be the same. The FDIC would retain its flexibility to raise assessment rates up to 3 basis points above or below base assessment rates without the necessity of further rulemaking.

[14] The proposed rule clarifies that if the FDIC disagrees with the ratings changes to an institution's risk assignment by its primary federal regulator or, for state-chartered institutions, by the state banking supervisor, the FDIC will notify the institution of its decision and any resulting change to an institution's risk assignment is effective as of the date of FDIC's transmittal notice.

[15] The expert judgment ranking is a risk ranking of large institutions based on FDIC's current analyses. The ranking is largely based on the information available through the FDIC's Large Insured Depository Institution (LIDI) program. Large institutions that failed or received significant government support over the period are assigned the worst risk ranking and are included in the statistical analysis. Appendix 1 describes the statistical analysis in detail.

III. Risk-Based Assessment System for Large Insured Depository Institutions

A "large institution" would continue to be defined under the proposal as an insured depository institution with $10 billion or greater in total assets for at least four consecutive quarters. The proposal would apply to all large institutions regardless of whether they are defined as new.[16] Insured branches of foreign banks would not be defined as large institutions.

A. Scorecard for Large Institutions (Other Than Highly Complex Institutions)

The scorecard method would use risk measures to derive an assessment rate reflective of the risk that an institution poses to the insurance fund. Each scorecard would produce two scores: A performance score and a loss severity score. To arrive at a performance score, the scorecard would combine CAMELS ratings and financial measures into a single performance score between 0 and 100. The FDIC would have limited ability to adjust an institution's performance score based upon quantitative or qualitative measures not adequately captured in the scorecard.

The scorecard would also combine loss severity measures into a single loss severity score between 0 and 100. The loss severity score would then be converted into a loss severity measure. The FDIC would also have limited ability to alter an institution's loss severity score based upon quantitative or qualitative measures not adequately captured in the scorecard. Multiplying the performance score by the loss severity measure would produce a combined score, which would then be converted to an initial assessment rate.

In general, a risk measure value reflecting lower risk than the cutoff value that results in a score of 0 would also receive a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the cutoff value that results in a score of 100 would also receive a score of 100, where 100 equals the highest risk for that measure. A risk measure value between the cutoff values would be converted to a score between 0 and 100, which would be rounded to 3 decimal points.

Table 3 shows scorecard measures and the possible range of scores.

TABLE 3—SCORECARD FOR LARGE INSTITUTIONS

Components	Scorecard measures	Score
CAMELS	*Weighted Average CAMELS*	*25–100*
Ability to Withstand Asset-Related Stress	Tier 1 Common Capital Ratio (Tier 1 Common Capital/Total Average Assets less Disallowed Intangibles).	0–100
	Concentration Measure Higher Risk Concentrations; or Growth-Adjusted Portfolio Concentrations.	0–100
	Core Earnings/Average Total Assets	0–100
	Credit Quality Measure Criticized and Classified Items/Tier 1 Capital and Reserves; or Underperforming Assets/Tier 1 Capital and Reserves.	0–100
	Subtotal	0–100
	Outlier Add-ons	
	Criticized and Classified Items/Tier 1 Capital and Reserves; or Underperforming Assets/Tier 1 Capital and Reserves.	30
	Higher Risk Concentrations	30
	Total ability to withstand asset-related stress score	*0–160*
Ability to Withstand Funding-Related Stress.	Core Deposits/Total Liabilities	0–100
	Unfunded Commitments/Total Assets	0–100
	Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	0–100
	Total ability to withstand funding-related stress score	*0–100*
	Total Performance Score	*0–100*
Potential Loss Severity	Potential Losses/Total Domestic Deposits (loss severity measure)	0–100
	Secured Liabilities/Total Domestic Deposits	0–100
	Total loss severity score	*0–100*

[16] In almost all cases, an institution that has had $10 billion or greater in total assets for four consecutive quarters will have CAMELS ratings. However, in the rare event that a large institution has not yet received CAMELS ratings, it would be given a weighted average CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

1. Performance Score

The first component of the scorecard for large institutions would be the performance score. The performance score for large institutions would be the weighted average of three inputs: (1) Weighted average CAMELS rating; (2) ability to withstand asset-related stress measures; and (3) ability to withstand funding-related stress measures. Table 4 shows the weight given to each of these three inputs.

TABLE 4—PERFORMANCE SCORE INPUTS AND WEIGHTS

Performance score inputs	Weight (percent)
CAMELS Rating	30
Ability to Withstand Asset-Related Stress	50
Ability to Withstand Funding-Related Stress	20

a. Weighted Average CAMELS Score

To derive the weighted average CAMELS score, a weighted average of an institution's CAMELS component ratings would first be calculated using the weights that are applied in the current rule as shown in Table 5 below.

TABLE 5—WEIGHTS FOR CAMELS COMPONENT RATINGS

CAMELS component	Weight (percent)
C	20
A	20
M	25
E	10
L	10
S	10

A weighted average CAMELS rating would be converted to a score that ranges from 25 to 100. A weighted average rating of 1 would equal a score of 25 and a weighted average of 3.5 or greater would equal a score of 100. Weighted average CAMELS ratings between 1 and 3.5 would be assigned a score between 25 and 100. The score would increase at an increasing rate as the weighted average CAMELS rating increases.

Weighted average CAMELS ratings between 1 and 3.5 would be assigned a score between 25 and 100 according to the following equation:

$$S = 25 + [(20/3) * (C^2 - 1)],$$

Where:

S = the weighted average CAMELS score and C = the weighted average CAMELS rating.

This equation normalizes the weighted average CAMELS score to the same range as the other components described below so that it can be added to these components, resulting in a performance score. This conversion from a weighted average CAMELS rating to a score is a non-linear conversion. Other conversions used in this proposal would be linear. The non-linear conversion recognizes that the difference between higher CAMELS ratings (*e.g.,* a CAMELS 3 versus a CAMELS 4) represents a greater difference in risk than the difference between lower CAMELS ratings (*e.g.,* a CAMELS 1 versus a CAMELS 2).

b. Ability To Withstand Asset-Related Stress Component

The ability to withstand asset-related stress component would contain measures that are most relevant to assessing a large institution's ability to withstand such stress. These measures would be the following:

- Tier 1 common capital ratio;
- Concentration measure (the higher of the higher-risk concentrations measure or growth-adjusted portfolio concentrations measures);
- Core earnings/average total assets; and
- Credit quality measure (the higher of the criticized and classified items/Tier 1 capital and reserves or underperforming assets/Tier 1 capital and reserves).

In general, these measures proved to be the most statistically significant measures of an institution's ability to withstand asset-related stress, as described in Appendix 1. Appendix B describes these measures in detail and gives the source of the data used to determine them.

Each risk measure within the ability to withstand asset-related stress portion of the scorecard would be converted linearly to a score between 0 and 100 where 100 equals the highest risk and 0 equals the lowest risk for that measure.[17] For each risk measure, a value reflecting lower risk than the cutoff value that results in a score of 0 will also receive a score of 0, where 0 equals the lowest risk for that measure. A value reflecting higher risk than the cutoff value that results in a score of 100 will also receive a score of 100, where 100 equals the highest risk for that measure. A risk measure value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100. For the Concentration Measure and Credit Quality Measures, a lower ratio implies lower risk and a higher ratio implies higher risk. For these measures, a value between the minimum and maximum cutoff values will be converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min),$$

where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

For the Tier 1 Common Capital Ratio and Core Earnings to Average Total Assets Ratio, a lower value represents higher risk and a higher value represents lower risk. For these measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (Max - V)*100/(Max - Min),$$

where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

The concentration measure score would equal the higher of the two scores that make up the concentration measure score, as would the credit quality score.[18] The credit quality score would be based upon the higher of the criticized and classified items ratio score or the underperforming assets ratio score.[19] Table 6 shows each of the measures, gives the cutoff values for each measure and shows the weight assigned to the measure to derive a score for an institution's ability to withstand asset-related stress. Most of the minimum and maximum cutoff values for each risk measure equal the 10th and 90th percentile values of the particular measure among large institutions based upon data from the period between the first quarter of 2000 and the fourth quarter of 2009.[20] [21]

[17] This process, in effect, normalizes all the ratios to the same range of values and allows the numbers to be added together.

[18] The higher-risk concentration measure gauges concentrations that are currently deemed to be high risk. The growth-adjusted portfolio concentration measure does not solely consider high-risk portfolios, but considers all portfolio concentrations.

[19] The criticized and classified items ratio measures commercial credit quality while the underperforming assets ratio is often a better indicator for consumer portfolios.

[20] Cutoff values are rounded to one decimal point.

[21] The measures in which the 10th and 90th percentiles would not be used would be the higher-risk concentration measure and the criticized and classified asset ratio due to data availability. Data on the higher-risk concentration measure are available consistently since second quarter 2008, and criticized and classified assets are only available consistently since first quarter 2007. For the higher-risk concentration measure, the 85th percentile value is used as a maximum cutoff value. The maximum cutoff value for the criticized and classified asset ratio is close to but does not equal the 90th percentile value. These alternative cutoff values are partly based on recent experience.

TABLE 6—CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND ASSET-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Tier 1 Common Capital Ratio	5.8	12.9	15
Concentration Measure			35
Higher Risk Concentrations; or	0.0	3.2	
Growth-Adjusted Portfolio Concentrations	7.6	154.7	
Core Earnings/Average Total Assets	0.0	2.3	15
Credit Quality Measure			35
Criticized and Classified Items/Tier 1 Capital and Reserves; or	6.5	100.0	
Underperforming Assets/Tier 1 Capital and Reserves	2.3	35.1	

Each score would be multiplied by a respective weight and the resulting weighted score for each measure would be summed to arrive at an ability to withstand asset-related stress score, which could range from 0 to 100. The FDIC recognizes that extreme values for some measures should have an additional effect on the final scorecard total. For extreme values of certain measures reflecting particularly high risk, this score could increase through an outlier add-on. Specifically, if an institution's ratio of criticized and classified items to Tier 1 capital and reserves exceeded 100 percent or its ratio of underperforming assets to Tier 1 capital and reserves exceeded 50.2 percent, the ability to withstand asset-related stress component score would be increased by 30 points. Additionally, if the higher risk concentration measure exceeded 4.8, the ability to withstand asset-related stress component score would be increased by 30 points. These increases (outlier add-ons) would be determined separately and could increase the ability to withstand asset-related stress score by up to 60 points; thus, the ability to withstand asset-related stress component score could be as high as 160 points.[22]

Table 7 illustrates how the ability to withstand asset-related stress score would be calculated for a hypothetical bank, Bank A.

TABLE 7—ABILITY TO WITHSTAND ASSET-RELATED STRESS COMPONENT FOR BANK A

Scorecard measures	Value	Score	Weight (percent)	Weighted score
Tier 1 Common Capital Ratio	7.62	74.37	15	11.15
Concentration Measure		78.13	35	27.35
Higher Risk Concentrations; or	2.50	78.13		
Growth-Adjusted Portfolio Concentrations	45.00	25.42		
Core Earnings/Average Total Assets	0.50	78.26	15	11.74
Credit Quality Measure		100.00	35	35.00
Criticized and Classified Items/Tier 1 Capital and Reserves; or	104.32	100.00		
Underperforming Assets/Tier 1 Capital and Reserves	33.76	95.91		
Subtotal				85.24
Outlier Add-ons:				
Criticized and Classified Items/Tier 1 Capital and Reserves; or	104.32			30.00
Underperforming Assets/Tier 1 Capital and Reserves	33.76	30.00		
Higher Risk Concentrations	2.50	0.00		
Total ability to withstand asset-related stress score				115.24

Bank A's higher risk concentrations score (78.13) is higher than its growth-adjusted portfolio concentration score (25.42). Thus, the higher risk concentration score is multiplied by the 35 percent weight to get a weighted score of 27.35 and the growth-adjusted portfolio concentration score would be ignored. Similarly, Bank A's criticized and classified items to Tier 1 capital and reserves ratio score (100) is higher than its underperforming assets to Tier 1 capital and reserves ratio score (95.91). Therefore, the criticized and classified items to Tier 1 capital and reserves ratio score would be multiplied by the 35 percent weight to get a weighted score of 35.00 and the underperforming assets to Tier 1 capital and reserves ratio score would be ignored. These weighted scores, along with the weighted scores for the Tier 1 common capital ratio (11.15) and core earnings to average total assets ratio (11.74), would be

[22] That is, the statistical analysis shows that a significant amount of criticized and classified items or underperforming assets, or concentrations in high risk portfolios are the most significant (having coefficients with the largest absolute value) measures that help differentiate the risk profiles of large institutions and predict an institution's long-term performance. In addition, recent experience suggests that a small number of institutions with very high levels of criticized and classified items or underperforming assets, or high risk portfolio concentrations are particularly vulnerable to unexpected asset-related stress. The value that triggers the outlier add-on for the criticized and classified items to Tier 1 capital and reserves was determined using FDIC's judgment. The value that triggers the outlier add-on for the underperforming assets to Tier 1 capital and reserves is the 95th percentile value for the distribution of values of that measure for large institutions from 2000 to 2009. The value that triggers the outlier add-on for the higher risk concentration measure is the 90th percentile value for the distribution of values of that measure for large institutions from second quarter 2008 to fourth quarter 2009. A lower value was chosen for this measure due to a short history of available data.

added together, resulting in the subtotal of 85.24. Because Bank A's criticized and classified items to Tier 1 capital and reserves ratio score is greater than 100, the criticized and classified items to Tier 1 capital and reserves ratio outlier add-on would be triggered, and an additional 30 points would be added to Bank A's score. Bank A's higher risk concentrations measure score does not exceed 4.8; therefore, the second outlier add-on would not be triggered. Thus, only the outlier add-on for the criticized and classified items to Tier 1 capital and reserves ratio would be added to the subtotal to arrive at the asset vulnerability component score of 115.24 for Bank A.

c. Ability To Withstand Funding-Related Stress

The ability to withstand funding-related stress component would contain three measures that are most relevant to assessing a large institution's ability to withstand such stress—a core deposits to total liabilities ratio, an unfunded commitments to total assets ratio, and a liquid assets to short-term liabilities (liquidity coverage) ratio. These ratios are significant in predicting a large institution's long-term performance in the statistical test described in Appendix 1. Appendix B describes these ratios in detail and gives the source of the data used to determine them.

Each risk measure would be converted to a score between 0 and 100 where 100 equals the highest risk and 0 equals the lowest risk for that measure. A risk measure value reflecting lower risk than the cutoff value that results in a score of 0, will also receive a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the cutoff value that results in a score of 100, will also receive a score of 100, where 100 equals the highest risk for that measure. For the Core Deposits/Liabilities measure and the Liquidity Coverage Ratio, a lower ratio implies higher risk and a higher ratio implies lower risk. For these measures, a value between the minimum and maximum cutoff values will be converted linearly to a score between 0 and 100, according to the following formula:

$$S = (Max - V)*100/(Max - Min)$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

For the Unfunded Commitments/Assets measure, a lower value represents lower risk and a higher value represents higher risk. For these measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min)$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

The ability to withstand funding-related stress component score would be the weighted average of the three measure scores. Table 8 shows the cutoff values and weights for these measures.

TABLE 8—CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Core Deposits/Total Liabilities	3.2	79.1	40
Unfunded Commitments/Total Assets	0.3	42.2	40
Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	5.6	170.9	20

d. Calculation of Performance Score

The weighted average CAMELS score, the ability to withstand asset-related stress score, and the ability to withstand funding-related stress score would then be multiplied by their weights and the results would be summed to arrive at the performance score. This score would not be less than 0 or more than 100 under the proposal. In the example in Table 9, Bank A's performance score would be 81.70.

TABLE 9—PERFORMANCE SCORE FOR BANK A

Performance score components	Weight (percent)	Score	Weighted score
Weighted Average CAMELS Score	30	65.15	19.54
Ability to Withstand Asset-Related Stress Score	50	115.24	57.62
Ability to Withstand Funding-Related Stress Score	20	22.69	4.54
Total Performance Score	.....	.....	81.70

The performance score could be adjusted, up or down, by a maximum of 15 points, based upon significant risk factors that are not adequately captured in the scorecard. The resulting score, however, could not be less than 0 or more than 100. The FDIC would use a process similar to the current large bank adjustment to determine the amount of the adjustment to the performance score.[23] This discretionary adjustment is discussed in more detail below.

2. Loss Severity Score

The loss severity score would measure the relative magnitude of potential losses to the FDIC in the event of an institution's failure. The loss severity score would be based on two measures that are most relevant to assessing an institution's potential loss severity. The loss severity measure is the ratio of possible losses to the FDIC in the event of an institution's failure to total domestic deposits, averaged over three quarters. A standardized set of assumptions—based on recent failures—regarding liability runoffs and the recovery value of asset categories are applied to calculate possible losses to the FDIC. (Appendix D to the NPR describes the calculation of the measure

[23] 12 CFR 327.9(d)(4) (2009).

in detail.) A loss severity measure is used as part of the current large bank adjustment. The second measure is the ratio of secured liabilities to total domestic deposits. (The greater an institution's secured liabilities relative to domestic deposits, the greater the FDIC's potential rate of loss in the event of failure, since secured liabilities have priority in payment over deposits at failure.) These measures are quantitative measures that are derived from readily available data. Appendix B defines these measures and gives the source of the data used to calculate them.

Each risk measure would be converted to a score between 0 and 100 where 100 equals the highest risk and 0 equals the lowest risk for that measure. A risk measure value reflecting lower risk than the minimum cutoff value results in a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the maximum cutoff value results in a score of 100, where 100 equals the highest risk for that measure. A risk measure value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min),$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

The loss severity score would be the weighted average of these scores. Table 10 shows cutoff values and weights for these measures. The loss severity score would not be less than 0 or more than 100 under the proposal.

TABLE 10—CUTOFF VALUES AND WEIGHTS FOR LOSS SEVERITY SCORE MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Potential Losses/Total Domestic Deposits (Loss Severity Measure)	0.0	30.1	50
Secured Liabilities/Total Domestic Deposits	0.0	75.7	50

In the example in Table 11, Bank A's loss severity score would be 36.04.

TABLE 11—LOSS SEVERITY SCORE FOR BANK A

Scorecard measures	Ratio	Score	Weight (percent)	Weighted score
Potential Losses/Total Domestic Deposits (Loss severity measure)	15.20	50.50	50	25.25
Secured Liabilities/Total Domestic Deposits	16.34	21.59	50	10.79
Total Loss Severity Score				36.04

Similar to the performance score, the loss severity score could be adjusted, up or down, by a maximum of 15 points, based on significant risk factors specific to the institution that are not adequately captured in the scorecard. The resulting score, however, could not be less than 0 or more than 100. The FDIC would use a process similar to the current large bank adjustment to determine the amount of the adjustment to the loss severity score.[24] This discretionary adjustment is discussed in more detail below.

3. Initial Base Assessment Rate

Under the proposal, once the performance and loss severity scores are calculated, and potentially adjusted, these scores would be converted to an initial base assessment rate using the following method:

First, the loss severity score would be converted into a loss severity measure that ranges from 0.8 (score of 5 or lower) to 1.2 (score of 85 or higher). Scores that fall at or below the minimum cutoff of 5 would receive a loss severity measure of 0.8 and scores that fall at or above the maximum cutoff of 85 would receive a loss severity score of 1.2. Again, a linear interpolation would be used to convert loss severity scores between the cutoffs into a loss severity measure. The conversion would be made using the following formula:

$$\text{Loss Severity Measure} = 0.8 + [(\text{Loss Severity Score} - 5) \times 0.005]$$

For example, if Bank A's loss severity score is 36.04, its loss severity measure would be 0.96, calculated as follows:

$$0.8 + [(36.04 - 5) * 0.005] = 0.96.$$

Next, the performance score would be multiplied by the loss severity measure to produce a total score (total score = performance score * loss severity measure). Since the loss severity measure ranges from 0.8 to 1.2, the total score could be up to 20 percent higher or lower than the performance score. The total score would be capped at 100 under the proposal and would be rounded to two decimal places. For example, if Bank A's performance score is 81.70 and its loss severity measure is 0.96, its total score would be 78.43, calculated as follows:

$$81.70 * 0.96 = 78.43$$

A large institution with a total score of 30 or lower would pay the minimum initial base assessment rate and an institution with a total score of 90 or greater would pay the maximum initial base assessment rate.[25] For total scores between 30 and 90, initial base assessment rates would rise at an increasing rate as the total score increased. The initial base assessment rate (in basis points) would be calculated according to the following formula (assuming that the maximum initial base assessment rate was 40 basis points higher than the minimum rate):[26]

[24] 12 CFR 327.9(d)(4) (2009).

[25] The score of 30 and 90 equals about the 20th and about the 97th percentile values, respectively, based on scorecard results as of first quarter 2005 through fourth quarter 2006.

[26] The rate of increase in the initial base assessment rate is based on a statistical analysis of failure probabilities as described in Appendix 2.

$$Rate = \text{Minimum Rate} - 0.165289 + \left(68.02027 \times \left(\frac{Score}{100}\right)^5\right)$$

For example, if Bank A's total score were 78.43, and the minimum and maximum initial base assessment rates were 10 basis points and 50 basis points, respectively, its initial base assessment rate would be 30.02 basis points, calculated as follows:

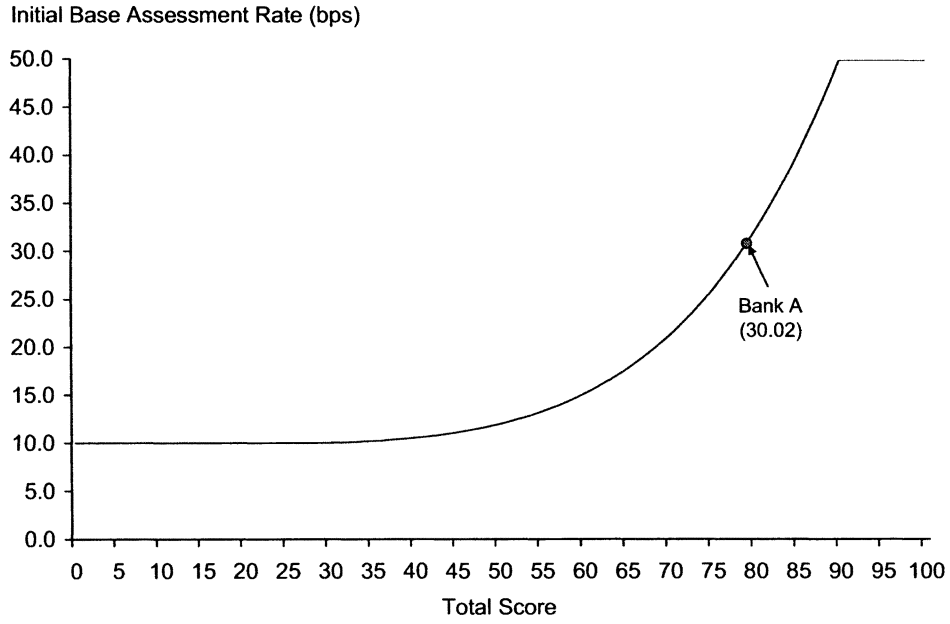
$$(10 \text{ bps} - 0.165289) + \left(68.02027 \times \left(\frac{78.43}{100}\right)^5\right) = 30.02 \text{ basis points}^{27}$$

This calculation of an initial assessment rate is based on an approximated statistical relationship between an institution's total score and its estimated three-year cumulative failure probability.

Chart 2 illustrates the initial base assessment rate based on a range of total scores and Bank A's assessment rate is indicated on the curve.

Chart 2

Proposed Initial Base Assessment Rates



The initial base assessment rate could be adjusted as a result of the unsecured debt adjustment, secured liability adjustment and brokered deposit adjustment (discussed below).

B. Scorecard for Highly Complex Institutions

As mentioned above, those institutions that are structurally and operationally complex or that pose unique challenges and risks in case of failure (highly complex institutions) would have a different scorecard under the proposal. A "highly complex institution" would be defined as: (1) An insured depository institution (excluding a credit card bank) with greater than $50 billion in total assets that is wholly owned by a parent company with more than $500 billion in total assets, or wholly owned by one or more intermediate parent companies that are wholly owned by a holding company with more than $500 billion in assets, or (2) a processing bank and trust company with greater than $10 billion in total assets, provided that the information required to calculate assessment rates as a highly complex institution is readily available to the FDIC.[28] Under the proposal, highly complex institutions would have a

[27] The initial base assessment rate would be rounded to two decimal points.

[28] A parent company would be defined as a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act. A credit card bank would be defined as a bank for which credit card plus securitized receivables exceed 50 percent of assets plus securitized receivables. A processing bank and trust company would be defined as an institution whose last 3 years' non-lending interest income plus fiduciary revenues plus investment banking fees exceed 50 percent of total revenues (and last 3 years' fiduciary revenues are non-zero).

scorecard with measures tailored to the risks posed by these institutions, but the methodology involved would be the same for both scorecards.

The scorecard for highly complex institutions has four additional measures that do not appear in the scorecard for other large institutions (the senior bond spread, the institution's parent company's tangible common equity (TCE) ratio, the 10-day 99 percent Value at Risk (VaR), and the short-term funding to total assets ratio). These measures were designed to measure vulnerability to changes in the market and would be incorporated into the calculation of a highly complex institution's initial base assessment rate because of the institution's greater involvement in market activities. Appendix B describes these measures in detail and gives the source of the data used to calculate the measures.

The scorecard for highly complex institutions, like the scorecard for other large institutions, would contain a performance component and a loss severity component. However, the performance score for highly complex institutions would contain an additional component—the market indicators component. Table 12 shows the scorecard measures and the possible range of scores that would be used for these institutions. Table 13 gives the weights associated with the four components of the performance scorecard for highly complex institutions.

TABLE 12—SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS

Components	Scorecard measures	Score
CAMELS	*Weighted Average CAMELS*	*25–100*
Market Indicator	Senior Bond Spread	0–100
	Outlier Add-ons	
	Parent Company Tangible Common Equity (TCE) Ratio	30
	Total Market Indicator score	*0–130*
Ability to Withstand Asset-Related Stress	Tier 1 Common Capital Ratio (Tier 1 Common Capital/Total Average Assets less Disallowed Intangibles).	0–100
	Concentration Measure Higher Risk Concentrations; or Growth-Adjusted Portfolio Concentrations	0–100
	Core Earnings/Average Total Assets	0–100
	Credit Quality Measure Criticized and Classified Items/Tier 1 Capital and Reserves Underperforming Assets/Tier 1 Capital and Reserves	0–100
	10-day 99% VaR/Tier 1 Capital	0–100
	Subtotal	0–100
	Outlier Add-ons	
	Criticized and Classified Items/Tier 1 Capital and Reserves; or Underperforming Assets/Tier 1 Capital and Reserves	30
	Higher Risk Concentrations Measure	30
	Total ability to withstand asset-related stress score	*0–160*
Ability to Withstand Funding-Related Stress.	Core Deposits/Total Liabilities	0–100
	Unfunded Commitments/Total Assets	0–100
	Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	0–100
	Short-term Funding/Total Assets	0–100
	Subtotal	0–100
	Outlier Add-ons	
	Short-term funding/Total Assets	30
	Total ability to withstand funding-related stress score	*0–130*
	Total Performance Score	*0–100*
Potential Loss Severity	Potential Losses/Total Domestic Deposits (loss severity measure)	0–100

TABLE 12—SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS—Continued

Components	Scorecard measures	Score
	Secured Liabilities/Total Domestic Deposits	0–100
	Total loss severity score	*0–100*

TABLE 13—PERFORMANCE SCORE COMPONENTS AND WEIGHTS

Performance score components	Weight (percent)
CAMELS Rating	20
Market Indicators	10
Ability to Withstand Asset-Related Stress	50
Ability to Withstand Funding-Related Stress	20

The additional component, the market indicator component, would be added to the performance scorecard for highly complex institutions. The market indicator component contains only one measure, the senior bond spread score, and one outlier add-on. The FDIC would use the senior bond spread because this measure can be compared consistently across institutions. The senior bond spread would be converted linearly to a score between 0 and 100. The minimum and maximum cutoff values for the market indicator measure are shown in Table 14. The market indicator component score would be adjusted by up to 30 points if the institution's parent company's tangible common equity (TCE) ratio fell below 4 percent since the market generally perceives a parent company to be vulnerable if its TCE is less than 4 percent. Including the outlier add-on, the market indicator component score could be as high as 130 points.

TABLE 14—CUTOFF VALUES AND WEIGHT FOR MARKET INDICATOR MEASURE

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Senior Bond Spread	0.6	3.8	100

The scorecard for highly complex institutions adds one additional factor to the ability to withstand asset-related stress component—the 10-day 99 percent Value at Risk (VaR)/Tier 1 capital—and one additional factor to the ability to withstand funding-related stress component—the short-term funding to total assets ratio. Table 15 and Table 16 show cutoff values and weights for ability to withstand asset-related stress measures and ability to withstand funding-related stress measures, respectively.

TABLE 15—CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND ASSET-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Tier 1 Common Capital Ratio	5.8	12.9	10
Concentration Measure:			35
Higher Risk Concentrations; or	0.0	3.2	
Growth-Adjusted Portfolio Concentrations	7.6	154.7	
Core Earnings/Average Total Assets	0.0	2.3	10
Credit Quality Measure:			35
Criticized and Classified Items to Tier 1 Capital and Reserves; or	6.5	100.0	
Underperforming Assets/Tier 1 Capital and Reserves	2.3	35.1	
10-day 99 VaR/Tier 1 Capital	0.1	0.5	10

TABLE 16—CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Core Deposits/Total Liabilities	3.2	79.1	30
Unfunded Commitments/Total Assets	0.3	42.2	30
Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	5.6	170.9	20
Short-term Funding/Total Assets	0.0	19.1	20

The scorecard for highly complex institutions also adds an additional outlier add-on. The ability to withstand funding-related stress component score for highly complex institutions would be adjusted by 30 points if the ratio of short-term funding to total assets exceeded 26.9 percent.[29] The use of

[29] Historical analysis shows that a significant amount of short-term funding can increase the risk profile of an institution. External funding sources

short-term funding has proved to be highly unstable and the FDIC has found an increased vulnerability, particularly for institutions that are active participants, when there is a heavy reliance on this type of funding. Including the outlier add-on, the ability to withstand funding-related stress component score for highly complex institutions could be as high as 130 points.

To calculate the performance score for highly complex institutions, the weighted average CAMELS score, the market indicators score, the ability to withstand asset-related stress score, and the ability to withstand funding-related stress score would be multiplied by their weights and the results would be summed to arrive at the performance score. The score would be capped at 100 under the proposal. The loss severity score for highly complex institutions would be calculated the same way as the loss severity score for other large institutions.

As is the case for other large institutions, the performance score and the loss severity score for highly complex institutions could be adjusted, up or down, by maximum of 15 points each, based upon significant risk factors that are not adequately captured in the scorecard. The resulting scores, however, could not be less than 0 or more than 100. The FDIC would use a process similar to the current large bank adjustment to determine the amount of any adjustments.[30] This discretionary adjustment is discussed in more detail below.

The initial base assessment rate for highly complex institutions would be calculated from the total score in the same manner as for other large institutions as described above. As in the case of other large institutions, the initial base assessment rate could also be adjusted as a result of the unsecured debt adjustment, the secured liability adjustment, and the brokered deposit adjustment (discussed below).

C. Large Bank Adjustment to the Performance Score and Loss Severity Score

Under current rules, large institutions and insured branches of foreign banks within Category 1 are subject to an assessment rate adjustment (the large bank adjustment). The large bank adjustment was designed to preserve consistency in the relative risk rankings of large institutions as indicated by assessment rates, to ensure fairness among all large institutions, and to ensure that assessment rates take into account all available information that is relevant to the FDIC's risk-based assessment decision. The FDIC proposes that a large bank adjustment be retained that would be imposed in the same manner (and subject to the same notice requirements) as under the current rule.[31]

As proposed, the FDIC could adjust the performance score and/or the loss severity score for all large institutions and highly complex institutions, up or down, by a maximum of 15 points each, based upon significant risk factors that are not adequately captured in the scorecard. In determining whether to make a large bank adjustment, the FDIC may consider such information as financial performance and condition information and other market or supervisory information. The FDIC would also consult with an institution's primary Federal regulator and, for state chartered institutions, state banking supervisor. Appendix E lists some, but not all, criteria that could be considered in determining whether or not a discretionary adjustment is necessary.

In general, the proposed adjustments to the performance and loss severity scores would have a proportionally greater effect on the assessment rate of those institutions with a higher total score. The effect of an upward adjustment to a score on the institution's assessment rate would be calculated as

$$A_u = 68.02027 \times \left[\left(\frac{P+C}{100} \right)^5 - \left(\frac{P}{100} \right)^5 \right]$$

and the effect of a downward adjustment to a score on the institution's assessment rate would be

$$A_d = 68.02027 \times \left[\left(\frac{P}{100} \right)^5 - \left(\frac{P-C}{100} \right)^5 \right],$$

where A_u is an increase in the assessment rate, A_d is a decrease in the assessment rate, C is the amount of upward adjustment to score, and P is pre-adjustment score.

Notifications involving an upward adjustment to an institution's assessment rate would be made in advance of implementing such an adjustment so that the institution has an opportunity to respond to or address the FDIC's rationale for proposing an upward adjustment. Adjustments would be implemented after considering the institution's response to this notification along with any subsequent changes either to the inputs or other risk factors that relate to the FDIC's decision.

The FDIC acknowledges the need to clarify and make technical changes to its adjustment guidelines for large institutions to ensure consistency with this rulemaking.[32]

D. Liability-Based Adjustments

The proposed rule would continue to allow for adjustments to an institution's initial base assessment rate as a result of certain long-term unsecured debt, secured liabilities and brokered deposits. These adjustments are currently provided for in the 2009 assessments rule, except that the brokered deposit adjustment currently applies only to institutions in Risk Categories II, III and IV. The proposed rule would extend the brokered deposit adjustment to all large institutions since the adjusted brokered deposit ratio (which took brokered deposits and growth into account for large Risk Category I institutions) would no longer apply. The unsecured debt adjustment, secured liability adjustment and brokered deposit adjustment would be applicable to both large institutions and highly complex institutions under the proposal.

E. Calculation of Total Assessment Rate

After making the adjustments just described, the resulting assessment rate would be the total assessment rate. Under the proposal, unlike the current rule for both large and small institutions, a large institution's total assessment rate could not be more than 50 percent lower than its initial base assessment rate. This change ensures that all institutions would pay assessments even if the minimum initial base assessment rate is set at 5 basis points or less.

F. Updating Scorecard

The FDIC proposes that it have the flexibility to update the minimum and maximum cutoff values and weights used in each scorecard annually, without notice-and-comment rulemaking. In particular, the FDIC could add new data from each year to its analysis and could, from time to time, exclude some earlier years from its analysis. Updating the minimum and maximum cutoff values and weights would allow the FDIC to use the most

can be a critical source of liquidity but short-term funding exposes an institution to near-term price risk and rollover risk. These risks increase for an institution during periods of market disruption or when the institution itself is experiencing financial distress. The add-on is triggered when the level of short-term funding to total assets ratio exceeds 26.9%. This is the 95th percentile of this measure among large institutions based upon data from the period between the third quarter of 1999 and the second quarter of 2009.

[30] 12 CFR 327.9(d)(4)(2009).

[31] 12 CFR 327.9(d)(4) (2009).

[32] 72 FR 27122 (May 14, 2007).

recent data, thereby improving the accuracy of the scorecard method.

On the other hand, if, as a result of its review and analysis, the FDIC concludes that *additional* or *alternative* measures should be used to determine risk-based assessments or that a new method should be used to differentiate risk among large institutions and highly complex institutions, such changes would be made through notice-and-comment rulemaking.

Financial ratios for any given quarter would continue to be calculated from the report of condition filed by each institution or data collected through the FDIC's LIDI program as of the last day of the quarter.[33] CAMELS component rating changes would continue to be effective as of the date that the rating change is transmitted to the institution for purposes of determining assessment rates.[34]

IV. Assessment Rates

As discussed above, the FDIC proposes a wider range of assessment rates than under the current assessment system. To maintain approximately the same total revenue under the proposed rule as under the current system, the FDIC proposes that the Board adopt new initial and total base assessment rate schedules set out in Tables 17 and 18, effective January 1, 2011.

Under the proposed rule, the range of initial base assessment rates for small institutions and insured branches of foreign banks in Risk Category I would be uniformly 2 basis points lower than under the current assessment system; the initial base assessment rate for institutions in Risk Category II would be unchanged; while the proposed initial base assessment rate for small institutions and insured branches in Risk categories III and IV would be somewhat higher. For large and highly complex institutions the minimum rate in the proposed range of rates would be 2 basis points lower than the current Risk Category I minimum assessment rate and the maximum rate in the range would be slightly higher than current maximum Risk Category IV assessment rates.[35]

Actual total assessment rates will be set uniformly 3 basis points higher than the proposed rates in accordance with the Amended Restoration Plan that the FDIC adopted on September 29, 2009.[36]

TABLE 17—PROPOSED INITIAL AND TOTAL BASE ASSESSMENT RATES FOR SMALL INSTITUTIONS AND INSURED BRANCHES OF FOREIGN BANKS

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	10–14	22	34	50
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–7	0–11	0–17	0–25
Brokered deposit adjustment		0–10	0–10	0–10
Total Base Assessment Rate	5–21	17–43	29–61	45–85

All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates. All rates shown would increase 3 basis points on January 1, 2011, pursuant to the FDIC Amended Restoration Plan adopted on September 29, 2009. 74 FR 51062 (Oct. 2, 2009).

TABLE 18—PROPOSED INITIAL AND TOTAL BASE ASSESSMENT RATES FOR LARGE INSTITUTIONS

	Large institutions
Initial base assessment rate	10–50
Unsecured debt adjustment	−5–0
Secured liability adjustment	0–25
Brokered deposit adjustment	0–10
Total Base Assessment Rate	5–85

All amounts are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates. All rates shown would increase 3 basis points on January 1, 2011, pursuant to the FDIC Amended Restoration Plan adopted on September 29, 2009. 74 FR 51062 (Oct. 2, 2009).

Based upon the analysis and projections below, the FDIC has concluded that the proposed assessment rate structure (including the previously announced 3 basis point uniform increase in assessment rates beginning January 1, 2011) should satisfy the FDIC's revenue and liquidity needs. Under the proposal, for the fourth quarter 2009 assessment period, total base assessment rates would have been lower for about 52 percent of large institutions and 76 percent of small institutions.[37] The rates would have been higher for about 48 percent of large institutions and 9 percent of small institutions. The rates would have remained the same for 15 percent of small institutions.

Fund Balance and Reserve Ratio Projections

In September 2009, the FDIC projected that both the Fund balance

[33] Reports of condition include Reports of Income and Condition and Thrift Financial Reports.

[34] Pursuant to existing supervisory practice, the FDIC does not assign a different component rating from that assigned by an institution's primary federal regulator, even if the FDIC disagrees with a CAMELS component assigned by an institution's primary federal regulator, unless: (1) The disagreement over the component rating also involves a disagreement over a CAMELS composite rating; and (2) the disagreement over the CAMELS composite rating is not a disagreement over whether the CAMELS composite rating should be a 1 or a 2. The FDIC has no plans to alter this practice.

[35] 12 U.S.C. 1817(b)(2)(D) provides that "No insured depository institution shall be barred from the lowest risk category solely because of size."

[36] 74 FR 51062 (Oct. 2, 2009). Under current rules, the FDIC has discretion to increase or decrease assessment rates in effect up to 3 basis points above or below total base assessment rates without the need for additional rulemaking. The proposed rule would not affect this provision.

[37] For the purpose of this analysis, large institutions are those with total assets of $10 billion or greater as of December 31, 2009. The estimates in the text regarding the effect of the proposal on assessment rates, the effect on industry capital and earnings discussed later in the text and the Regulatory Flexibility Act analysis discussed later in the text, are based in part on approximations of a few risk measures.

and the reserve ratio as of September 30, 2009, would be negative, owing, in part, to an increase in provisioning for anticipated failures. The FDIC also projected the Fund balance and reserve ratio for each quarter over the next several years using the then most recently available information on expected failures and loss rates and statistical analyses of trends in CAMELS downgrades, failure rates and loss rates. The FDIC projected that, over the period 2009 through 2013, the Fund could incur approximately $100 billion in failure costs; the FDIC projected that most of these costs would occur in 2009 and 2010.

Partly as a result of these projections, the FDIC increased risk-based assessment rates uniformly by 3 basis points effective January 1, 2011. Despite this increase, the FDIC projected that the Fund balance would become significantly negative in 2010 and would remain negative until first quarter 2013. According to these projections, the reserve ratio would return to the statutorily mandated minimum reserve ratio of 1.15 percent in the first quarter of 2017.

As projected, the Fund balance and reserve ratio as of September 30, 2009, and December 31, 2009, were negative. (The Fund balance on December 31, 2009 was negative $20.9 billion; the reserve ratio was −0.39 percent.) In February 2010, the FDIC reexamined its projections using the most recently available information on expected failures and loss rates, and statistical analyses of trends in CAMELS downgrades, failure rates and loss rates. This reexamination resulted in no material changes to the FDIC's projections. However, these projections are subject to considerable uncertainty. Losses could be less than or exceed projected amounts, for example, if conditions affecting the national or regional economies, prove less or more severe than is currently anticipated.

Effect on Industry Capital and Earnings

The proposed changes involve increases in premiums for some institutions and reductions in premiums for other institutions. Because overall revenue remains almost constant, the effect on aggregate earnings and capital is small. Projections show that imposition of the new premiums will increase aggregate capital by 2 one-hundredths of one percent (0.02 percent) over one year. For 6,042 institutions, assessment rates would decrease and earnings and capital would increase; for 771 institutions, assessment rates would increase and earnings and capital would decline. For institutions whose initial earnings are positive, the change in premiums will increase earnings by an average of 0.87 percent (on an asset weighted basis). For institutions whose initial earnings are negative, the change in premiums will increase losses by an average of 0.85 percent (on an asset weighted basis).[38]

Imposition of the proposed assessment rates would make a critical difference for two institutions, whose tier 1 capital ratio would fall below 2 percent over a one-year horizon (assuming the proposed rule were adopted for 2010). No institution's equity-to-capital ratio would fall below 4 percent over a one-year horizon.[39]

V. Effective Date

January 1, 2011.

VI. Request for Comments

The FDIC seeks comment on every aspect of this proposed rule. In particular, the FDIC seeks comment on the questions set out below. The FDIC asks that commenters include reasons for their positions.[40] The FDIC specifically requests comment on the following:

A. Questions for Future Rulemakings

As mentioned above, the FDIC seeks input on additional measures that could be incorporated into the assessment system in future rulemakings.

a. The FDIC would like to factor into the scorecard credit, liquidity, market, and interest rate stress tests. How should these stress tests be factored into the scorecard? What methodology and assumptions should be used?

b. Underwriting is a key determinant of credit quality. The FDIC would like to develop metrics to measure underwriting quality. How could underwriting quality best be measured?

c. A high level of counterparty risk can significantly increase an institution's ability to withstand stress. How could counterparty risk best be measured?

d. A high level of market risk can significantly increase an institution's ability to withstand stress. How could market risk best be measured?

e. How could liquidity risk best be measured?

f. How should the exposure of individual banks to systemic risk be measured? What activities and behavior constitute exposure to systemic risk?

g. How is the capability of risk management best assessed?

h. Should the FDIC review the assessment system applicable to small institutions to determine whether improvements, including improvements analogous to those being proposed for the large institution assessment system, should be made to the assessment system used for small institutions?

B. Questions About the Proposal

1. *Deposit Insurance Pricing System:*

(a) Should the risk categories be eliminated as proposed?

(b) Should the two scorecards be combined?

(c) Should highly complex institutions be defined as proposed?

(d) Should the risk measures, particularly the components of the high risk concentrations measure, be defined as proposed?

(e) Should the performance score and loss severity score be combined as proposed?

(f) Should the initial base assessment rate be calculated as proposed?

2. *Performance Scorecard:*

(a) Are the proposed weights assigned to performance score components and measures appropriate?

(b) Are the cut-off values for the risk measures and the outlier add-ons appropriate?

(c) Should any other measures be added? Should any measures be removed or replaced?

(d) For the growth-adjusted portfolio concentration measure, are the risk weights assigned to each portfolio as described in Appendix C appropriate?

[38] The proposed changes to assessment rates would not take effect until January 1, 2011. For two reasons, the analysis in the text examines the effect on earnings and capital had proposed rates been in effect on January 1, 2010. First, it is difficult to project 2011 institution income so far in advance. Second, as discussed in the text, because overall assessment revenue under the proposed system would remain approximately the same as the current system, the effect on earnings and capital is small for almost all institutions. This conclusion holds true for 2011, as well, because both current and proposed assessment rates will increase uniformly by three basis points beginning January 1, 2011. (A detailed analysis of the projected effects of the payment of proposed assessment on the capital and earnings of insured institutions is contained in Appendix 3.)

[39] In setting assessment rates, the FDIC's Board of Directors of the FDIC is authorized to set assessments for insured depository institutions in such amounts as the Board of Directors may determine to be necessary. 12 U.S.C. 1817(b)(2)(A). In so doing, the Board shall consider: (1) The estimated operating expenses of the DIF; (2) the estimated case resolution expenses and income of the DIF; (3) the projected effects of the payment on the capital and earnings of insured depository institutions; (4) the risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b) (1) under the risk-based assessment system, including the requirement under such paragraph to maintain a risk-based system; and (5) any other factors the Board of Directors may determine to be appropriate. 12 U.S.C. 1817(b)(2)(B). As reflected in the text, in making its projections of the Fund balance and liquidity needs, and in making its recommendations regarding assessment rates, the Board has taken into account these statutory factors.

[40] The FDIC may not address all of the questions posed in the current rulemaking, but may consider the information gathered in future actions.

(e) For the higher-risk concentration measure, should concentrations in other portfolios be considered?

(f) Should purchased impaired loans under SOP 03–3 be excluded from the definition of criticized and classified items or underperforming assets?

(g) Should the liquidity coverage ratio be computed as proposed?

(h) Are the outlier add-ons appropriate measures? Is the score addition for add-ons appropriate?

(i) Is the size of the discretionary adjustment to the performance score appropriate?

3. *Loss Severity Scorecard:*

(a) Are asset haircuts, runoff, and secured liability assumptions for the loss severity measure as described in Appendix D appropriate?

(b) Are asset adjustments due to liability runoff and capital reductions as described in Appendix D applied appropriately?

(c) Are the proposed weights assigned to loss severity measures appropriate?

(d) Are cut-off values for risk measures and outlier add-ons appropriate?

(e) Should any other measures be added? Should any measures be removed or replaced?

(f) Is the size of the discretionary adjustment to the loss severity score appropriate?

4. *Assessment Rate Schedule:*

(a) Should the entire proposed assessment rate schedule be adjusted to make it revenue neutral overall?

(b) Is the basis point range for assessments appropriate?

5. *Regulatory Matters:*

(a) What is the extent of regulatory burden with implementation of the proposed deposit insurance pricing system?

(b) Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?

(c) Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?

VII. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this proposal easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could the FDIC do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[41] Certain types of rules, such as rules of particular applicability relating to rates or corporate or financial structures, or practices relating to such rates or structures, are expressly excluded from the definition of "rule" for purposes of the RFA.[42] The proposed rule relates directly to the rates imposed on insured depository institutions for deposit insurance, and to the risk-based assessment system components that measure risk and weigh that risk in determining each institution's assessment rate, and includes technical and other changes to the FDIC's assessment regulations. Nonetheless, the FDIC is voluntarily undertaking an initial regulatory flexibility analysis of the proposed rule for publication.

As of December 31, 2009, of the 8,012 insured commercial banks and savings associations, there were 4,427 small insured depository institutions as that term is defined for purposes of the RFA (*i.e.,* those with $175 million or less in assets).

For purposes of this analysis, whether the FDIC were to collect needed assessments under the existing rule or under the proposed rule, the total amount of assessments collected would be the same. The FDIC's total assessment needs are driven by statutory requirements and by the FDIC's aggregate insurance losses, expenses, investment income, and insured deposit growth, among other factors. Given the FDIC's total assessment needs, the proposed rule would merely alter the distribution of assessments among insured institutions. Using data as of December 31, 2009, the FDIC calculated the total assessments that would be collected under the base rate schedule in the proposed rule.

The economic impact of the final rule on each small institution for RFA purposes (*i.e.,* institutions with assets of $175 million or less) was then calculated as the difference in basis points and annual assessments under the proposed rule compared to the existing rule, assuming the same total assessments collected by the FDIC from the banking industry.[43] [44]

Based on the December 2009 data, under the proposed rule, the change in the assessment system would result in lower assessments for the majority of small institutions. Small institutions would experience an average drop of 1.39 basis points in their assessment rates under the proposed rule. More than 86 percent of these institutions would face a lower assessment rate, with 76 percent of them being charged 1 to 2 basis points lower than the current pricing rule. Of the total 4,427 small institutions, only 13 percent would experience an increase and only 173 institutions would experience an assessment rate increase of more than 2 basis points. These figures indicate that the proposed rule will have a positive economic impact for a substantial number of small insured institutions. Table 19 below sets forth the results of the analysis in more detail.

[41] See 5 U.S.C. 603, 604 and 605.

[42] 5 U.S.C. 601.

[43] Throughout this regulatory flexibility analysis (unlike the rest of the final rule), a "small institution" refers to an institution with assets of $175 million or less.

[44] The proposed rule would not go into effect until January 1, 2011. Under the existing assessment system and under the proposed rule, assessment rates would increase uniformly by three basis points beginning on that date. Because the increase is uniform in both cases, the analysis in the text, which compares current assessment rates with proposed base assessment rates, should apply equally to 2011.

TABLE 19—CHANGE IN BASIS POINT ASSESSMENTS UNDER THE PROPOSED RULE

Change in basis point assessments	Number of institutions	Percent of institutions
More than −2 basis points lower	114	2.58
−2 to −1 basis points lower	3,377	76.28
−1 to 0 basis points lower	356	8.04
0 to 1 basis points higher	243	5.49
1 to 2 basis points higher	164	3.70
More than 2 basis points higher	173	3.91
Total	4,427	100.00

The FDIC performed a similar analysis to determine the impact on profits for small institutions. Based on December 2009 data, under the final rule, 96 percent of the 3,039 small institutions with reported profits would experience a positive change in their annual profits. Table 20 sets forth the results of the analysis in more detail.

TABLE 20—CHANGE IN ASSESSMENTS UNDER THE PROPOSAL AS A PERCENTAGE OF PROFIT *

Change in assessments as a percentage of profit	Number of institutions	Percent of institutions
More than .2 percent lower	18	0.59
.1 to .2 percent lower	18	0.59
.05 to .1 percent lower	41	1.35
0 to .05 percent lower	2,841	93.48
0 to 1 percent higher	121	3.98
Total	3,039	100.00

* Institutions with negative or no profit were excluded. These institutions are shown separately in the next table.

Of those small institutions with reported profits, less than 4 percent would have experienced a decrease in their profits under the proposed rule. More than 96 percent of these small institutions would have an increase in their profits. Again, these figures indicate a positive economic impact on profits for the majority of small insured institutions.

Table 21 excludes small institutions that either show no profit or show a loss, because a percentage cannot be calculated. The FDIC analyzed the effect of the proposed rule on these institutions by determining the annual assessment change that would result. Table 21 below shows that only 2.81 percent (39) of the 1,388 small insured institutions in this category would experience an increase in annual assessments of $10,000 or more. More than 10 percent of these institutions would experience a decrease of $5,000 or more.

TABLE 21—CHANGE IN ASSESSMENTS UNDER THE PROPOSED RULE FOR INSTITUTIONS WITH NEGATIVE OR NO REPORTED PROFIT

Change in assessments	Number of institutions	Percent of institutions
$5,000–$10,000 decrease	147	10.59
$1,000–$5,000 decrease	468	33.72
$0–$1,000 decrease	334	24.06
$0–$1,000 increase	151	10.88
$1,000–$10,000 increase	249	17.94
$10,000 increase or more	39	2.81
Total	1,388	100.00

The proposed rule does not directly impose any "reporting" or "recordkeeping" requirements within the meaning of the Paperwork Reduction Act. The compliance requirements for the proposed rule would not exceed existing compliance requirements for the present system of FDIC deposit insurance assessments, which, in any event, are governed by separate regulations.

The FDIC is unaware of any duplicative, overlapping or conflicting Federal rules.

The initial regulatory flexibility analysis set forth above demonstrates that the proposed rule would not have a significant economic impact on a substantial number of small institutions within the meaning of those terms as used in the RFA.[45]

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the proposed rule.

[45] 5 U.S.C. 605.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Banking, Savings associations.

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–1819, 1821; Sec. 2101–2109, Pub. L. 109–171, 120 Stat. 9–21, and Sec. 3, Pubic Law 109–173, 119 Stat. 3605.

2. In § 327.4, revise paragraphs (c) and (f) to read as follows:

§ 327.4 Assessment rates.

* * * * *

(c) *Requests for review.* An institution that believes any assessment risk assignment provided by the Corporation pursuant to paragraph (a) of this section is incorrect and seeks to change it must submit a written request for review of that risk assignment. An institution cannot request review through this process of the CAMELS ratings assigned by its primary Federal regulator or challenge the appropriateness of any such rating; each Federal regulator has established procedures for that purpose. An institution may also request review of a determination by the FDIC to assess the institution as a large or a small institution (12 CFR 327.9(d)(9)) or a determination by the FDIC that the institution is a new institution (12 CFR 327.9(d)(10)). Any request for review must be submitted within 90 days from the date the assessment risk assignment being challenged pursuant to paragraph (a) of this section appears on the institution's quarterly certified statement invoice. The request shall be submitted to the Corporation's Director of the Division of Insurance and Research in Washington, DC, and shall include documentation sufficient to support the change sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance and Research (or designee) or the Director of the Division of Supervision and Consumer Protection (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether a change is warranted. If the institution requesting review disagrees with that determination, it may appeal to the FDIC's Assessment Appeals Committee. Notice of the procedures applicable to appeals will be included with the written determination.

* * * * *

(f) *Effective date for changes to risk assignment.* Changes to an insured institution's risk assignment resulting from a supervisory ratings change become effective as of the date of written notification to the institution by its primary Federal regulator or state authority of its supervisory rating (even when the CAMELS component ratings have not been disclosed to the institution), if the FDIC, after taking into account other information that could affect the rating, agrees with the rating. If the FDIC does not agree, the FDIC will notify the institution of the FDIC's supervisory rating; resulting changes to an insured institution's risk assignment become effective as of the date of written notification to the institution by the FDIC.

* * * * *

3. In § 327.8, revise paragraphs (g), (h), (i), (m), (n), (o), (p), (q), and (r), and add paragraphs (t), (u) and (v) to read as follows:

§ 327.8 Definitions.

* * * * *

(g) *Small Institution.* An insured depository institution with assets of less than $10 billion as of December 31, 2006, and an insured branch of a foreign institution, shall be classified as a small institution. If, after December 31, 2006, an institution classified as large under paragraph (h) of this section (other than an institution classified as large for purposes of § 327.9(d)(8)) reports assets of less than $10 billion in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as small beginning the following quarter.

(h) *Large Institution.* An institution classified as large for purposes of § 327.9(d)(9) or an insured depository institution with assets of $10 billion or more as of December 31, 2006 (other than an insured branch of a foreign bank or a highly complex institution) shall be classified as a large institution. If, after December 31, 2006, an institution classified as small under paragraph (g) of this section reports assets of $10 billion or more in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution as large beginning the following quarter.

(i) *Highly Complex Institution.* A highly complex institution is an insured depository institution with greater than $50 billion in total assets that is not a credit card bank and is wholly owned by a parent company with more than $500 billion in total assets, or wholly owned by one or more intermediate parent companies that are wholly owned by a holding company with more than $500 billion in assets, or a processing bank and trust company with greater than $10 billion in total assets, provided that the information required to calculate assessment rates as a highly complex institution is readily available to the FDIC. If, after December 31, 2010, an institution classified as highly complex falls below $50 billion in total assets in its quarterly reports of condition for four consecutive quarters, or its parent company or companies fall below $500 billion in total assets for four consecutive quarters, or a processing bank and trust company falls below $10 billion in total assets in its quarterly reports of condition for four consecutive quarters, the FDIC will reclassify the institution beginning the following quarter.

* * * * *

(m) *Established depository institution.* An established insured depository institution is a bank or savings association that has been federally insured for at least five years as of the last day of any quarter for which it is being assessed.

(1) *Merger or consolidation involving new and established institution(s).* Subject to paragraphs (m)(2), (3), (4), and (5) of this section and § 327.9(d)(10)(iii), (iv), when an established institution merges into or consolidates with a new institution, the resulting institution is a new institution unless:

(i) The assets of the established institution, as reported in its report of condition for the quarter ending immediately before the merger, exceeded the assets of the new institution, as reported in its report of condition for the quarter ending immediately before the merger; and

(ii) Substantially all of the management of the established

institution continued as management of the resulting or surviving institution.

(2) *Consolidation involving established institutions.* When established institutions consolidate, the resulting institution is an established institution.

(3) *Grandfather exception.* If a new institution merges into an established institution, and the merger agreement was entered into on or before July 11, 2006, the resulting institution shall be deemed to be an established institution for purposes of this part.

(4) *Subsidiary exception.* Subject to paragraph (m)(5) of this section, a new institution will be considered established if it is a wholly owned subsidiary of:

(i) A company that is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act, and:

(A) At least one eligible depository institution (as defined in 12 CFR 303.2(r)) that is owned by the holding company has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established; and

(B) The holding company has a composite rating of at least "2" for bank holding companies or an above average or "A" rating for savings and loan holding companies and at least 75 percent of its insured depository institution assets are assets of eligible depository institutions, as defined in 12 CFR 303.2(r); or

(ii) An eligible depository institution, as defined in 12 CFR 303.2(r), that has been chartered as a bank or savings association for at least five years as of the date that the otherwise new institution was established.

(5) *Effect of credit union conversion.* In determining whether an insured depository institution is new or established, the FDIC will include any period of time that the institution was a federally insured credit union.

(n) *Risk assignment.* For all small institutions and insured branched of foreign banks, risk assignment includes assignment to Risk Category I, II, III, or IV, and, within Risk Category I, assignment to an assessment rate or rates. For all large institutions and highly complex institutions, risk assignment includes assignment to an assessment rate or rates.

(o) *Unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(6), unsecured debt shall include senior unsecured liabilities and subordinated debt.

(p) *Senior unsecured liability.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(6), senior unsecured liabilities shall be the unsecured portion of other borrowed money as defined in the quarterly report of condition for the reporting period as defined in paragraph (b) of this section, but shall not include any senior unsecured debt that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program, 12 CFR Part 370.

(q) *Subordinated debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(6), subordinated debt shall be as defined in the quarterly report of condition for the reporting period; however, subordinated debt shall also include limited-life preferred stock as defined in the quarterly report of condition for the reporting period.

(r) *Long-term unsecured debt.* For purposes of the unsecured debt adjustment as set forth in § 327.9(d)(6), long-term unsecured debt shall be unsecured debt with at least one year remaining until maturity.

* * * * *

(t) *Processing bank and trust company.* A processing bank and trust company is an institution whose last 3 years' non-lending interest income plus fiduciary revenues plus investment banking fees exceed 50 percent of total revenues (and its last 3 years' fiduciary revenues are non-zero).

(u) *Parent company.* A parent company is a bank holding company under the Bank Holding Company Act of 1956 or a savings and loan holding company under the Home Owners' Loan Act.

(v) *Credit Card Bank.* A credit card bank is a bank for which credit card plus securitized receivables exceed 50 percent of assets plus securitized receivables.

4. Revise § 327.9 to read as follows:

§ 327.9 Assessment risk categories and pricing methods.

(a) *Risk Categories.* Each small insured depository institution and each insured branch of a foreign bank shall be assigned to one of the following four Risk Categories based upon the institution's capital evaluation and supervisory evaluation as defined in this section.

(1) *Risk Category I.* Institutions in Supervisory Group A that are Well Capitalized;

(2) *Risk Category II.* Institutions in Supervisory Group A that are Adequately Capitalized, and institutions in Supervisory Group B that are either Well Capitalized or Adequately Capitalized;

(3) *Risk Category III.* Institutions in Supervisory Groups A and B that are Undercapitalized, and institutions in Supervisory Group C that are Well Capitalized or Adequately Capitalized; and

(4) *Risk Category IV.* Institutions in Supervisory Group C that are Undercapitalized.

(b) *Capital evaluations.* Each small institution and each insured branch of a foreign bank will receive one of the following three capital evaluations on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the preceding January 1; dated as of June 30 for the assessment period beginning the preceding April 1; dated as of September 30 for the assessment period beginning the preceding July 1; and dated as of December 31 for the assessment period beginning the preceding October 1.

(1) *Well Capitalized.* (i) Except as provided in paragraph (b)(1)(ii) of this section, a Well Capitalized institution is one that satisfies each of the following capital ratio standards: Total risk-based ratio, 10.0 percent or greater; Tier 1 risk-based ratio, 6.0 percent or greater; and Tier 1 leverage ratio, 5.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Well Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 108 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section.

(2) *Adequately Capitalized.* (i) Except as provided in paragraph (b)(2)(ii) of this section, an Adequately Capitalized institution is one that does not satisfy the standards of Well Capitalized under this paragraph but satisfies each of the following capital ratio standards: Total risk-based ratio, 8.0 percent or greater; Tier 1 risk-based ratio, 4.0 percent or greater; and Tier 1 leverage ratio, 4.0 percent or greater.

(ii) For purposes of this section, an insured branch of a foreign bank will be deemed to be Adequately Capitalized if the insured branch:

(A) Maintains the pledge of assets required under § 347.209 of this chapter; and

(B) Maintains the eligible assets prescribed under § 347.210 of this chapter at 106 percent or more of the average book value of the insured branch's third-party liabilities for the quarter ending on the report date specified in paragraph (b) of this section; and

(C) Does not meet the definition of a Well Capitalized insured branch of a foreign bank.

(3) *Undercapitalized.* An undercapitalized institution is one that does not qualify as either Well Capitalized or Adequately Capitalized under paragraphs (b)(1) and (b)(2) of this section.

(c) *Supervisory evaluations.* Each small institution and each insured branch of a foreign bank will be assigned to one of three Supervisory Groups based on the Corporation's consideration of supervisory evaluations provided by the institution's primary Federal regulator. The supervisory evaluations include the results of examination findings by the primary Federal regulator, as well as other information that the primary Federal regulator determines to be relevant. In addition, the Corporation will take into consideration such other information (such as state examination findings, as appropriate) as it determines to be relevant to the institution's financial condition and the risk posed to the Deposit Insurance Fund. The three Supervisory Groups are:

(1) *Supervisory Group "A."* This Supervisory Group consists of financially sound institutions with only a few minor weaknesses;

(2) *Supervisory Group "B."* This Supervisory Group consists of institutions that demonstrate weaknesses which, if not corrected, could result in significant deterioration of the institution and increased risk of loss to the Deposit Insurance Fund; and

(3) *Supervisory Group "C."* This Supervisory Group consists of institutions that pose a substantial probability of loss to the Deposit Insurance Fund unless effective corrective action is taken.

(d) *Determining Assessment Rates for Insured Depository Institutions.* A small insured depository institution in Risk Category I shall have its initial base assessment rate determined using the financial ratios method set forth in paragraph (d)(1) of this section. An insured branch of a foreign bank in Risk Category I shall have its assessment rate determined using the weighted average ROCA component rating method set forth in paragraph (d)(2) of this section. A large insured depository institution shall have its initial base assessment rate determined using the large institution method set forth in paragraph (d)(3) of this section. A highly complex insured depository institution shall have its initial base assessment rate determined using the highly complex institution method set forth at paragraph (d)(4) of this section.

(1) *Financial ratios method.* Under the financial ratios method for small Risk Category I institutions, each of six financial ratios and a weighted average of CAMELS component ratings will be multiplied by a corresponding pricing multiplier. The sum of these products will be added to or subtracted from a uniform amount. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. An institution's initial base assessment rate, subject to adjustment pursuant to paragraphs (d)(6) and (7) of this section, as appropriate (resulting in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate), and adjusted for the actual assessment rates set by the Board under § 327.10(c), will equal an institution's assessment rate. The six financial ratios are: Tier 1 Leverage Ratio; Loans past due 30–89 days/gross assets; Nonperforming assets/gross assets; Net loan charge-offs/gross assets; Net income before taxes/risk-weighted assets; and the Adjusted brokered deposit ratio. The ratios are defined in Table A.1 of Appendix A to this subpart. The ratios will be determined for an assessment period based upon information contained in an institution's report of condition filed as of the last day of the assessment period as set out in § 327.9(b). The weighted average of CAMELS component ratings is created by multiplying each component by the following percentages and adding the products: Capital adequacy—25%, Asset quality—20%, Management—25%, Earnings—10%, Liquidity—10%, and Sensitivity to market risk—10%. The following table sets forth the initial values of the pricing multipliers:

Risk measures *	Pricing multipliers **
Tier 1 Leverage Ratio	(0.056)
Loans Past Due 30–89 Days/Gross Assets	0.575
Nonperforming Assets/Gross Assets	1.074
Net Loan Charge-Offs/Gross Assets	1.210
Net Income before Taxes/Risk-Weighted Assets	(0.764)
Adjusted brokered deposit ratio	0.065
Weighted Average CAMELS Component Rating	1.095

* Ratios are expressed as percentages.
** Multipliers are rounded to three decimal places.

The six financial ratios and the weighted average CAMELS component rating will be multiplied by the respective pricing multiplier, and the products will be summed. To this result will be added the uniform amount of 9.861. The resulting sum shall equal the institution's initial base assessment rate; provided, however, that no institution's initial base assessment rate shall be less than the minimum initial base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum initial base assessment rate in effect for Risk Category I institutions for that quarter. Appendix A to this subpart describes the derivation of the pricing multipliers and uniform amount and explains how they will be periodically updated.

(i) *Publication and uniform amount and pricing multipliers.* The FDIC will publish notice in the **Federal Register** whenever a change is made to the uniform amount or the pricing multipliers for the financial ratios method.

(ii) *Implementation of CAMELS rating changes*—(A) *Changes between risk categories.* If, during a quarter, a CAMELS composite rating change occurs that results in an institution whose Risk Category I assessment rate is

determined using the financial ratios method moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the supervisory ratings in effect before the change and the financial ratios as of the end of the quarter, subject to adjustment pursuant to paragraphs (d)(6) and (7) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(c). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(6), (7) and (8) of this section, shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a CAMELS composite rating change occurs that results in an institution moving from Risk Category II, III or IV to Risk Category I, and its initial base assessment rate would be determined using the financial ratios method, then that method shall apply for the portion of the quarter that it was in Risk Category I, subject to adjustment pursuant to paragraphs (d)(6) and (7) of this section, as appropriate, and adjusted for the actual assessment rates set by the Board under § 327.10(c). For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate, which shall be subject to adjustment pursuant to paragraphs (d)(6), (7) and (8) of this section, shall be determined under the assessment schedule for the appropriate Risk Category.

(B) *Changes within Risk Category I.* If, during a quarter, an institution's CAMELS component ratings change in a way that would change the institution's initial base assessment rate within Risk Category I, the initial base assessment rate for the period before the change shall be determined under the financial ratios method using the CAMELS component ratings in effect before the change, subject to adjustment pursuant to paragraphs (d)(6) and (7) of this section, as appropriate. Beginning on the date of the CAMELS component ratings change, the initial base assessment rate for the remainder of the quarter shall be determined using the CAMELS component ratings in effect after the change, again subject to adjustment pursuant to paragraphs (d)(6) and (7) of this section, as appropriate.

(2) *Assessment rate for insured branches of foreign banks*—(i) *Insured branches of foreign banks in Risk Category I.* Insured branches of foreign banks in Risk Category I shall be assessed using the weighted average ROCA component rating.

(ii) *Weighted average ROCA component rating.* The weighted average ROCA component rating shall equal the sum of the products that result from multiplying ROCA component ratings by the following percentages: Risk Management—35%, Operational Controls—25%, Compliance—25%, and Asset Quality—15%. The weighted average ROCA rating will be multiplied by 5.076 (which shall be the pricing multiplier). To this result will be added 1.873 (which shall be a uniform amount for all insured branches of foreign banks). The resulting sum—the initial base assessment rate—will equal an institution's total base assessment rate; provided, however, that no institution's total base assessment rate will be less than the minimum total base assessment rate in effect for Risk Category I institutions for that quarter nor greater than the maximum total base assessment rate in effect for Risk Category I institutions for that quarter.

(iii) No insured branch of a foreign bank in any risk category shall be subject to the unsecured debt adjustment, the secured liability adjustment, the brokered deposit adjustment, or the adjustment in paragraph (d)(5) of this section.

(iv) *Implementation of changes between Risk Categories for insured branches of foreign banks.* If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category I to Risk Category II, III or IV, the institution's initial base assessment rate for the portion of the quarter that it was in Risk Category I shall be determined using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category. If, during a quarter, a ROCA rating change occurs that results in an insured branch of a foreign bank moving from Risk Category II, III or IV to Risk Category I, the institution's assessment rate for the portion of the quarter that it was in Risk Category I shall equal the rate determined as provided using the weighted average ROCA component rating. For the portion of the quarter that the institution was not in Risk Category I, the institution's initial base assessment rate shall be determined under the assessment schedule for the appropriate Risk Category.

(v) *Implementation of changes within Risk Category I for insured branches of foreign banks.* If, during a quarter, an insured branch of a foreign bank remains in Risk Category I, but a ROCA component rating changes that would affect the institution's initial base assessment rate, separate assessment rates for the portion(s) of the quarter before and after the change(s) shall be determined under paragraph (d)(2) of this section.

(3) *Assessment scorecard for large institutions (other than highly complex institutions).* All large institutions other than highly complex institutions shall have their quarterly assessments determined using the scorecard for large institutions.

SCORECARD FOR LARGE INSTITUTIONS

Components	Scorecard measures	Score
CAMELS	*Weighted Average CAMELS*	*25–100*
Ability to Withstand Asset-Related Stress	Tier 1 Common Capital Ratio (Tier 1 Common Capital/Total Average Assets less Disallowed Intangibles).	0–100
	Concentration Measure Higher Risk Concentrations; or Growth-Adjusted Portfolio Concentrations.	0–100
	Core Earnings/Average Total Assets	0–100
	Credit Quality Measure Criticized and Classified Items/Tier 1 Capital and Reserves; or	0–100

SCORECARD FOR LARGE INSTITUTIONS—Continued

Components	Scorecard measures	Score
	Underperforming Assets/Tier 1 Capital and Reserves.	
	Subtotal	0–100
	Outlier Add-ons	
	Criticized and Classified Items/Tier 1 Capital and Reserves; or	30
	Underperforming Assets/Tier 1 Capital and Reserves Higher Risk Concentrations	30
	Total ability to withstand asset-related stress score	*0–160*
Ability to Withstand Funding-Related Stress.	Core Deposits/Total Liabilities	0–100
	Unfunded Commitments/Total Assets	0–100
	Liquid Assets/Short-Term Liabilities (liquidity coverage ratio)	0–100
	Total ability to withstand funding-related stress score	*0–100*
	Total Performance Score	*0–100*
Potential Loss Severity	Potential Losses/Total Domestic Deposits (loss severity measure)	0–100
	Secured Liabilities/Total Domestic Deposits	0–100
Total loss severity score		0–100

Note: The large institution scorecard produces two scores: Performance and loss severity.

(i) *Performance score.* The performance score for large institutions is the weighted average of three inputs: Weighted average CAMELS rating (30%); ability to withstand asset-related stress measures (50%); and ability to withstand funding-related stress measures (20%).

(A) *Weighted Average CAMELS score.* To derive the weighted average CAMELS score, a weighted average of an institution's CAMELS component ratings is calculated using the following weights:

CAMELS component	Weight (percent)
C	25
A	20
M	25
E	10
L	10
S	10

A weighted average CAMELS rating is converted to a score that ranges from 25 to 100. A weighted average rating of 1 equals a score of 25 and a weighted average of 3.5 or greater equals a score of 100. Weighted average CAMELS ratings between 1 and 3.5 are assigned a score between 25 and 100 according to the following equation:

$$S = 25 + [(20/3)*(C^2 - 1)],$$

Where:

S = the weighted average CAMELS score and
C = the weighted average CAMELS rating.

(B) *Ability to Withstand Asset-Related Stress.* The ability to withstand asset-related stress component contains four measures: Tier 1 common ratio; Concentration measure (the higher of the higher-risk concentrations measure or growth-adjusted portfolio concentrations measures); Core earnings to average assets; and Credit quality measure (the higher of the criticized and classified assets to Tier 1 capital and reserves or underperforming assets to Tier 1 capital and reserves). Appendices B and C define these measures in detail and give the source of the data used to determine them.

The concentration measure score is the higher of the scores of the two measures that make up the concentration measure score (higher risk concentrations or growth adjusted portfolio concentrations). The credit quality score is the higher of the criticized and classified items ratio score or the underperforming assets ratio score. Each asset related stress measure is assigned the following cutoff values and weight to derive a score for an institution's ability to withstand asset-related stress:

CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND ASSET-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Tier 1 Common Capital Ratio	5.8	12.9	15
Concentration Measure:			35
Higher Risk Concentrations; or	0.0	3.2	
Growth-Adjusted Portfolio Concentrations	7.6	154.7	
Core Earnings/Average Total Assets	0.0	2.3	15
Credit Quality Measure:			35
Criticized and Classified Items/Tier 1 Capital and Reserves; or	6.5	100.0	

CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND ASSET-RELATED STRESS MEASURES—Continued

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Underperforming Assets/Tier 1 Capital and Reserves	2.3	35.1	

For each of the risk measures within the ability to withstand asset-related stress portion of the scorecard, a value reflecting lower risk than the cutoff value that results in a score of 0 will also receive a score of 0, where 0 equals the lowest risk for that measure. A value reflecting higher risk than the cutoff value that results in a score of 100 will also receive a score of 100, where 100 equals the highest risk for that measure. A risk measure value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100. For the Concentration Measure and Credit Quality Measures, a lower ratio implies lower risk and a higher ratio implies higher risk. For these measures, a value between the minimum and maximum cutoff values will be converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min),$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

For the Tier 1 Common Capital Ratio and Core Earnings to Average Total Assets Ratio, a lower value represents higher risk and a higher value represents lower risk. For these measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (Max - V)*100/(Max - Min),$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

Each score is multiplied by a respective weight and the resulting weighted score for each measure is summed to arrive at an ability to withstand asset-related stress score, which ranges from 0 to 100.

For extreme values of certain measures reflecting particularly high risk, this score can increase through an outlier add-on. If an institution's ratio of criticized and classified items to Tier 1 capital and reserves exceeds 100 percent or its ratio of underperforming assets to Tier 1 capital and reserves exceeds 50.2 percent, the ability to withstand asset-related stress component score is increased by 30 points. Additionally, if the higher risk concentration measure exceeds 4.8, the ability to withstand asset-related stress component score is increased by 30 points. These increases (outlier add-ons) are determined separately and can increase the ability to withstand asset-related score by up to 60 points; thus, the ability to withstand asset-related component score can be as high as 160 points.

(C) *Ability to Withstand Funding-Related Stress.* The ability to withstand funding-related stress component contains three risk measures: A core deposits to liabilities ratio, an unfunded commitments to total assets ratio, and a liquidity coverage ratio. Appendix B describes these ratios in detail and gives the source of the data used to determine them. The ability to withstand funding-related stress component score is the weighted average of the three measure scores. Each measure is assigned the following cutoff values and weights to derive a score for an institution's ability to withstand funding-related stress:

CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Core Deposits/Total Liabilities	3.2	79.1	40
Unfunded Commitments/Total Assets	0.3	42.2	40
Liquid Assets/Short-term Liabilities (Liquidity Coverage Ratio)	5.6	170.9	20

A risk measure value reflecting lower risk than the cutoff value that results in a score of 0, will also receive a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the cutoff value that results in a score of 100, will also receive a score of 100, where 100 equals the highest risk for that measure. For the Core Deposits/Liabilities measure and the Liquidity Coverage Ratio, a lower ratio implies higher risk and a higher ratio implies lower risk. For these measures, a value between the minimum and maximum cutoff values will be converted linearly to a score between 0 and 100, according to the following formula:

$$S = (Max - V)*100/(Max - Min)$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

For the Unfunded Commitments/Assets measure, a lower value represents lower risk and a higher value represents higher risk. For these measures, a value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min)$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

(D) *Calculation of Performance Score.* The weighted average CAMELS score, the ability to withstand asset-related stress score, and the ability to withstand funding-related stress score are multiplied by their weights and the results are summed to arrive at the performance score. The performance score cannot exceed 100. The performance score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in section (d)(5). The resulting score cannot be less than 0 or more than 100.

(ii) *Loss severity score.* The loss severity score is based on two measures: Loss severity measure and secured liabilities to total domestic deposits ratio. Appendices B and D describe

these measures in detail. The loss severity score is the weighted average of these scores. Each measure is assigned the following cutoff values and weight to derive a score for an institution's loss severity score:

CUTOFF VALUES AND WEIGHTS FOR LOSS SEVERITY SCORE MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Potential Losses/Total Domestic Deposits (loss severity measure)	0.0	30.1	50
Secured Liabilities/Total Domestic Deposits	0.0	75.7	50

A risk measure value reflecting lower risk than the minimum cutoff value results in a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the maximum cutoff value results in a score of 100, where 100 equals the highest risk for that measure. A risk measure value between the minimum and maximum cutoff values is converted linearly to a score between 0 and 100, according to the following formula:

$$S = (V - Min)*100/(Max - Min)$$

Where S is score (rounded to three decimal points), V is the value of the measure, Min is the minimum cutoff value and Max is the maximum cutoff value.

The loss severity score is subject to adjustment, up or down, by a maximum of 15 points, as set forth in section (d)(5). The resulting score cannot be less than 0 or more than 100.

(iii) *Initial base assessment rate.* The performance and loss severity scores, with any adjustments under paragraph (d)(5) of this section, are converted to an initial base assessment rate. The loss severity score is converted into a loss severity measure that ranges from 0.8 (score of 5 or lower) and 1.2 (score of 85 or higher). Scores that fall at or below the minimum cutoff of 5 receive a loss severity measure of 0.8 and scores that falls at or above the maximum cutoff of 85 receive a loss severity score of 1.2. The following linear interpolation converts loss severity scores between the cutoffs into a loss severity measure: (Loss Severity Measure = 0.8 + [(Loss Severity Score − 5) × 0.005]. The performance score is multiplied by the loss severity measure to produce a total score (total score = performance score * loss severity measure). The total score cannot exceed 100. A large institution with a total score of 30 or lower pays the minimum initial base assessment rate and an institution with a total score of 90 or greater pays the maximum initial base assessment rate. For total scores between 30 and 90, initial base assessment rates rise at an increasing rate as the total score increases, calculated according to the following formula:

$$Rate = \text{Minimum Rate} - 0.165289 + \left(68.02027 \times \left(\frac{Score}{100}\right)^5\right)$$

Where Rate is the initial base assessment rate and Minimum Rate is the minimum initial base assessment rate then in effect. Initial base assessment rates are subject to adjustment pursuant to sections (d)(6), (d)(7), and (d)(8), resulting in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(4) *Assessment scorecard for highly complex institutions.* All highly complex institutions shall have their quarterly assessments determined using the scorecard for highly complex institutions.

SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS

Components	Scorecard measures	Score
CAMELS	*Weighted Average CAMELS*	*25–100*
Market Indicator	Senior Bond Spread	0–100
	Outlier Add-ons	
	Parent Company Tangible Common Equity (TCE) Ratio	30
	Total Market Indicator score	*0–130*
Ability to Withstand Asset-Related Stress	Tier 1 Common Capital Ratio (Tier 1 Common Capital/Total Average Assets less Disallowed Intangibles).	0–100
	Concentration Measure Higher Risk Concentrations; or Growth-Adjusted Portfolio Concentrations.	0–100
	Core Earnings/Average Total Assets	0–100
	Credit Quality Measure Criticized and Classified Items/Tier 1 Capital and Reserves.	0–100

SCORECARD FOR HIGHLY COMPLEX INSTITUTIONS—Continued

Components	Scorecard measures	Score
	Underperforming Assets/Tier 1 Capital and Reserves.	
	10-day 99% VaR/Tier 1 Capital	0–100
	Subtotal	0–100
	Outlier Add-ons	
	Criticized and Classified Items/Tier 1 Capital and Reserves; or Underperforming Assets/Tier 1 Capital and Reserves	30
	Higher Risk Concentrations Measure	30
	Total ability to withstand asset-related stress score	*0–160*
Ability to Withstand Funding-Related Stress.	Core Deposits/Total Liabilities	0–100
	Unfunded Commitments/Total Assets	0–100
	Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	0–100
	Short-term Funding/Total Assets	0–100
	Subtotal	0–100
	Outlier Add-ons	
	Short-term funding/Total Assets	30
	Total ability to withstand funding-related stress score	*0–130*
	Total Performance Score	*0–100*
Potential Loss Severity	Potential Losses/Total Domestic Deposits (loss severity measure)	0–100
	Secured Liabilities/Total Domestic Deposits	0–100
	Total loss severity score	*0–100*

The scorecard for highly complex institutions contains the performance components and the loss severity components of the large bank scorecard and employs the same methodology. The assessment process set forth in section (d)(3) for the large bank scorecard applies to highly complex institutions, modified as follows. The scorecard for highly-complex institutions contains an additional component—market indicator—in the performance score; an additional component—10-day 99 percent Value at Risk (VaR)/Tier 1 capital—in the ability to withstand asset-related stress; and an additional component—short-term funding to total assets ratio—in the ability to withstand funding-related stress.

(i) *Performance score for highly complex institutions.* The performance score for highly complex institutions is the weighted average of four inputs: Weighted average CAMELS rating (20%); market indicator score (10%); ability to withstand asset-related stress score (50%); and ability to withstand funding-related stress score (20%). To calculate the performance score for highly complex institutions, the weighted average CAMELS score, the market indicator score, the ability to withstand asset-related stress score, and ability to withstand funding-related stress score are multiplied by their weights and the results are summed to arrive at the performance score. The resulting score cannot exceed 100.

(A) *Market indicator.* The market indicator component contains one component—the senior bond spread score, and one outlier add-on—the Parent Tangible Common Equity (TCE) ratio. The senior bond spread is converted to a score according to the linear interpolation method used for the large bank scorecard. The minimum and maximum cutoff values for the market indicator measure are:

CUTOFF VALUES AND WEIGHTS FOR MARKET INDICATOR MEASURE

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Senior Bond Spread	0.6	3.8	100

A risk measure value reflecting lower risk than the minimum cutoff value results in a score of 0, where 0 equals the lowest risk for that measure. A risk measure value reflecting higher risk than the maximum cutoff value results in a score of 100, where 100 equals the highest risk for that measure. A value between the minimum and maximum cutoff values will be converted linearly to a score between 0 and 100, according to the following formula:

$S = (V - Min)*100/(Max - Min)$

The market indicator component score can be adjusted by up to 30 points if the outlier add-on—institution's parent company's TCE ratio—falls below 4 percent. Including the outlier add-on, the market indicator component score can be as high as 130 points.

(B) *Ability to withstand asset-related stress.* The scorecard for highly complex institutions adds one additional factor to the ability to withstand asset-related stress component—the 10-day 99 percent Value at Risk (VaR)/Tier 1 capital. The cutoff values and weights for ability to withstand asset-related stress measures are set forth below.

CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND ASSET-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Tier 1 Common Ratio	5.8	12.9	10
Concentration Measure			35
Higher Risk Concentrations; or	0.0	3.2	
Growth-Adjusted Portfolio Concentrations	7.6	154.7	
Core Earnings/Average Total Assets	0.0	2.3	10
Credit Quality Measure			35
Criticized and Classified Items/Tier 1 Capital and Reserves; or	6.5	100.0	
Underperforming Assets/Tier 1 Capital and Reserves	2.3	35.1	
10-day 99% VaR/Tier 1 Capital	0.1	0.5	10

Appendix B describes these measures in detail and gives the source of the data used to calculate the measures.

(C) *Ability to withstand funding related stress.* The scorecard for highly complex institutions adds one additional factor to the ability to withstand funding-related stress component—the short-term funding to total assets ratio. The cutoff values and weights for ability to withstand funding-related stress measures for highly complex institutions are set forth below.

CUTOFF VALUES AND WEIGHTS FOR ABILITY TO WITHSTAND FUNDING-RELATED STRESS MEASURES

Scorecard measures	Cutoff values		Weight (percent)
	Minimum	Maximum	
Core Deposits/Total Liabilities	3.2	79.1	30
Unfunded Commitments/Total Assets	0.3	42.2	30
Liquid Assets/Short-term Liabilities (liquidity coverage ratio)	5.6	170.9	20
Short-term Funding/Total Assets	0.0	19.1	20

Appendix B describes these measures in detail and gives the source of the data used to calculate the measures.

The scorecard for highly complex institutions adds an additional outlier add-on to the scorecard for large institutions. The ability to withstand funding-related stress component score for highly complex institutions is adjusted by 30 points if the ratio of short term funding to total assets exceeds 26.9 percent. The maximum ability to withstand funding-related stress component score for highly complex institutions, including the outlier add-on, is 130 points.

(ii) *Loss severity score for highly complex institutions.* The loss severity score for highly complex institutions is calculated as provided for the loss severity score for large institutions in section (d)(3)(ii).

(iii) The performance score and the loss severity score for highly complex institutions can be adjusted, up or down, by maximum of 15 points each, as set forth in section (d)(5), resulting in the institution's initial base assessment rate.

(iv) The initial base assessment rate for highly complex institutions is calculated from the total score in the same manner as for large institutions as set forth in section (d)(3). Initial base assessment rates are subject to adjustment pursuant to sections (d)(6), (d)(7), and (d)(8), resulting in the institution's total base assessment rate, which in no case can be lower than 50 percent of the institution's initial base assessment rate.

(5) *Adjustment to performance score and/or loss severity score for large institutions and highly complex institutions.* The performance score and the loss severity score for large institutions and highly complex institutions are subject to adjustment under paragraph (d)(5) of this section, up or down, by a maximum of 15 points each, based upon significant risk factors that are not adequately captured in the appropriate scorecard. In making such adjustments, the FDIC may consider such information as financial performance and condition information and other market or supervisory information. Appendix E lists some, but not all, criteria that the FDIC may consider in determining whether to make such adjustments.

(i) *Prior notice of adjustments*—(A) *Prior notice of upward adjustment.* Prior to making any upward adjustment to an institution's performance score and/or loss severity score because of considerations of additional risk information, the FDIC will formally notify the institution and its primary Federal regulator and provide an opportunity to respond. This notification will include the reasons for

the adjustment(s) and when the adjustment(s) will take effect.

(B) *Prior notice of downward adjustment.* Prior to making any downward adjustment to an institution's performance score and/or loss severity score because of considerations of additional risk information, the FDIC will formally notify the institution's primary Federal regulator and provide an opportunity to respond.

(ii) *Determination whether to adjust upward; effective period of adjustment.* After considering an institution's and the primary Federal regulator's responses to the notice, the FDIC will determine whether the adjustment to an institution's performance score and/or loss severity score is warranted, taking into account any revisions to scorecard measures, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. The FDIC will evaluate the need for the adjustment each subsequent assessment period. The amount of adjustment will in no event be larger than that contained in the initial notice without further notice to, and consideration of, responses from the primary Federal regulator and the institution.

(iii) *Determination whether to adjust downward; effective period of adjustment.* After considering the primary Federal regulator's responses to the notice, the FDIC will determine whether the adjustment to performance score and/or loss severity score is warranted, taking into account any revisions to scorecard measures, as well as any actions taken by the institution to address the FDIC's concerns described in the notice. Any downward adjustment in an institution's performance score and/or loss severity score will remain in effect for subsequent assessment periods until the FDIC determines that an adjustment is no longer warranted. Downward adjustments will be made without notification to the institution. However, the FDIC will provide advance notice to an institution and its primary Federal regulator and give them an opportunity to respond before removing a downward adjustment.

(iv) *Adjustment without notice.* Notwithstanding the notice provisions set forth above, the FDIC may change an institution's performance score and/or loss severity score without advance notice under this paragraph, if the institution's supervisory ratings or the scorecard measures deteriorate.

(6) *Unsecured debt adjustment to initial base assessment rate for all institutions.* All small, large, and highly complex institutions, except new small institutions as provided under paragraph (d)(10)(i) of this section, are subject to downward adjustment of assessment rates for unsecured debt, based on the ratio of long-term unsecured debt (and, for small institutions as defined in paragraph (d)(6)(ii) of this section, specified amounts of Tier 1 capital) to domestic deposits. Any unsecured debt adjustment shall be made after any adjustment under paragraph (d)(5) of this section. Insured branches of foreign banks are not subject to the unsecured debt adjustment as provided in paragraph (d)(2)(iii).

(i) *Large institutions and highly complex institutions.* The unsecured debt adjustment for large institutions and highly complex institutions shall be determined by multiplying the institution's ratio of long-term unsecured debt to domestic deposits by 40 basis points.

(ii) *Small institutions*—The unsecured debt adjustment for small institutions will factor in an amount of Tier 1 capital (qualified Tier 1 capital) in addition to any long-term unsecured debt; the amount of qualified Tier 1 capital will be the sum of the amounts set forth below:

Range of Tier 1 capital to adjusted average assets	Amount of Tier 1 capital within range which is qualified (percent)
≤ 5%	0
> 5% and ≤ 6%	10
> 6% and ≤ 7%	20
> 7% and ≤ 8%	30
> 8% and ≤ 9%	40
> 9% and ≤ 10%	50
> 10% and ≤ 11%	60
> 11% and ≤ 12%	70
> 12% and ≤ 13%	80
> 13% and ≤ 14%	90
> 14%	100

For institutions that file Thrift Financial Reports, adjusted total assets will be used in place of adjusted average assets in the preceding table. The sum of qualified Tier 1 capital and long-term unsecured debt as a percentage of domestic deposits will be multiplied by 40 basis points to produce the unsecured debt adjustment for small institutions.

(iii) *Limitation*—No unsecured debt adjustment for any institution shall exceed 5 basis points. No unsecured debt adjustment for any institution shall result in a total base assessment rate that is less than 50 percent of the institution's initial base assessment rate.

(iv) *Applicable quarterly reports of condition*—Ratios for any given quarter shall be calculated from quarterly reports of condition (Call Reports and Thrift Financial Reports) filed by each institution as of the last day of the quarter.

(7) *Secured liability adjustment for all institutions.* All institutions, except insured branches of foreign banks as provided under paragraph (d)(2)(iii) of this section, are subject to upward adjustment of their assessment rate based upon the ratio of their secured liabilities to domestic deposits. Any such adjustment shall be made after any applicable adjustment under paragraph (d)(5) or (d)(6) of this section.

(i) *Secured liabilities for banks*—Secured liabilities for banks include Federal Home Loan Bank advances, securities sold under repurchase agreements, secured Federal funds purchased and other borrowings that are secured as reported in banks' quarterly Call Reports.

(ii) *Secured liabilities for savings associations*—Secured liabilities for savings associations include Federal Home Loan Bank advances as reported in quarterly Thrift Financial Reports ("TFRs"). Secured liabilities for savings associations also include securities sold under repurchase agreements, secured Federal funds purchased or other borrowings that are secured.

(iii) *Calculation*—An institution's ratio of secured liabilities to domestic deposits will, if greater than 25 percent, increase its assessment rate, but any such increase shall not exceed 50 percent of its assessment rate before the secured liabilities adjustment. For an institution that has a ratio of secured liabilities (as defined in paragraph (ii) above) to domestic deposits of greater than 25 percent, the institution's assessment rate (after taking into account any adjustment under paragraphs (d)(5) or (6) of this section) will be multiplied by the following amount: the ratio of the institution's secured liabilities to domestic deposits minus 0.25. Ratios of secured liabilities to domestic deposits shall be calculated from the report of condition, or similar report, filed by each institution.

(8) *Brokered Deposit Adjustment.* All small institutions in Risk Categories II, III, and IV, all large institutions, and all highly complex institutions shall be subject to an assessment rate adjustment for brokered deposits. Any such brokered deposit adjustment shall be made after any adjustment under paragraph (d)(5), (d)(6) or (d)(7) of this section. The brokered deposit adjustment includes all brokered deposits as defined in Section 29 of the Federal Deposit Insurance Act (12 U.S.C. 1831f), and 12 CFR 337.6, including reciprocal deposits as defined

in § 327.8(r), and brokered deposits that consist of balances swept into an insured institution by another institution. The adjustment under this paragraph is limited to those institutions whose ratio of brokered deposits to domestic deposits is greater than 10 percent; asset growth rates do not affect the adjustment. The adjustment is determined by multiplying by 25 basis points the difference between an institution's ratio of brokered deposits to domestic deposits and 0.10. The maximum brokered deposit adjustment will be 10 basis points. Brokered deposit ratios for any given quarter are calculated from the quarterly reports of condition filed by each institution as of the last day of the quarter. Insured branches of foreign banks are not subject to the brokered deposit adjustment as provided in section (d)(2)(iii).

(9) *Request to be treated as a large institution*—(i) *Procedure.* Any institution in Risk Category I with assets of between $5 billion and $10 billion may request that the FDIC determine its assessment rate as a large institution. The FDIC will grant such a request if it determines that it has sufficient information to do so. Any such request must be made to the FDIC's Division of Insurance and Research. Any approved change will become effective within one year from the date of the request. If an institution whose request has been granted subsequently reports assets of less than $5 billion in its report of condition for four consecutive quarters, the FDIC will consider such institution to be a small institution subject to the financial ratios method.

(ii) *Time limit on subsequent request for alternate method.* An institution whose request to be assessed as a large institution is granted by the FDIC shall not be eligible to request that it be assessed as a small institution for a period of three years from the first quarter in which its approved request to be assessed as a large bank became effective. Any request to be assessed as a small institution must be made to the FDIC's Division of Insurance and Research.

(iii) An institution that disagrees with the FDIC's determination that it is a large or small institution may request review of that determination pursuant to § 327.4(c).

(10) *New and established institutions and exceptions*—(i) *New small institutions.* A new small institution that is well capitalized shall be assessed the Risk Category I maximum initial base assessment rate for the relevant assessment period, except as provided in § 327.8(m)(1), (2), (3), (4), (5) and paragraphs (d)(10)(ii) and (iii) of this section. No new small institution in any risk category shall be subject to the unsecured debt adjustment as determined under paragraph (d)(6) of this section. All new small institutions in any Risk Category shall be subject to the secured liability adjustment as determined under paragraph (d)(7) of this section. All new small institutions in Risk Categories II, III, and IV shall be subject to the brokered deposit adjustment as determined under paragraph (d)(8) of this section.

(ii) *New large institutions and new highly complex institutions.* All new large institutions and all new highly complex institutions shall be assessed under the appropriate method provided at paragraph (d)(3) or (d)(4) of this section and subject to the adjustments provided at paragraphs (d)(5), (d)(7), and (d)(8) of this section. No new Highly Complex or large institutions are entitled to adjustment under paragraph (d)(6) of this section. If a large or highly complex institution has not yet received CAMELS ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(iii) *CAMELS ratings for the surviving institution in a merger or consolidation.* When an established institution merges with or consolidates into a new institution, if the FDIC determines the resulting institution to be an established institution under § 327.8(m)(1), its CAMELS ratings for assessment purposes will be based upon the established institution's ratings prior to the merger or consolidation until new ratings become available.

(iv) *Rate applicable to institutions subject to subsidiary or credit union exception.* If a small institution is considered established under § 327.8(m)(4) and (5), but does not have CAMELS component ratings, it shall be assessed at two basis points above the minimum initial base assessment rate applicable to Risk Category I institutions until it receives CAMELS component ratings. Thereafter, the assessment rate will be determined by annualizing, where appropriate, financial ratios obtained from all quarterly reports of condition that have been filed, until the institution files four quarterly reports of condition. If a large or highly complex institution is considered established under § 327.8(m)(4) and (5), but does not have CAMELS component ratings, it will be given a weighted CAMELS rating of 2 for assessment purposes until actual CAMELS ratings are assigned.

(v) *Request for review.* An institution that disagrees with the FDIC's determination that it is a new institution may request review of that determination pursuant to § 327.4(c).

(11) *Assessment rates for bridge depository institutions and conservatorships.* Institutions that are bridge depository institutions under 12 U.S.C. 1821(n) and institutions for which the Corporation has been appointed or serves as conservator shall, in all cases, be assessed at the Risk Category I minimum initial base assessment rate, which shall not be subject to adjustment under paragraphs (d)(5), (6), (7) or (8) of this section.

5. Revise § 327.10 to read as follows:

§ 327.10 Assessment rate schedules.

(a) *Initial and Total Base Assessment Rate Schedule for Small Institutions and Insured Branches of Foreign Banks.* The initial and total base assessment rate for a small insured depository institution or an insured branch of a foreign bank shall be the rate prescribed in the following schedule:

	Risk category I	Risk category II	Risk category III	Risk category IV
Initial base assessment rate	10–14	22	34	50
Unsecured debt adjustment	−5–0	−5–0	−5–0	−5–0
Secured liability adjustment	0–7	0–11	0–17	0–25
Brokered deposit adjustment		0–10	0–10	0–10
TOTAL BASE ASSESSMENT RATE	5–21	17–43	29–61	45–85

All amounts for all risk categories are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates. All rates shown will increase 3 basis points on January 1, 2011, pursuant to the FDIC Restoration Plan adopted on September 29, 2009 (74 FR 51062 (Oct. 2, 2009)).

(1) *Risk Category I Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for all institutions in Risk Category I shall range from 10 to 14 basis points.

(2) *Risk Category II, III, and IV Initial Base Assessment Rate Schedule.* The annual initial base assessment rates for Risk Categories II, III, and IV shall be 22, 34, and 50 basis points, respectively.

(3) *Risk Category I Total Base Assessment Rate Schedule after Adjustments.* The annual total base assessment rates after adjustments for all institutions in Risk Category I shall range from 5 to 21 basis points.

(4) *Risk Category II Total Base Assessment Rate Schedule after Adjustments.* The annual total base assessment rates after adjustments for all institutions in Risk Category II shall range from 17 to 43 basis points.

(5) *Risk Category III Total Base Assessment Rate Schedule after Adjustments.* The annual total base assessment rates after adjustments for all institutions in Risk Category III shall range from 29 to 61 basis points.

(6) *Risk Category IV Total Base Assessment Rate Schedule after Adjustments.* The annual total base assessment rates after adjustments for all institutions in Risk Category IV shall range from 45 to 85 basis points.

(7) All institutions in any one risk category, other than Risk Category I, will be charged the same initial base assessment rate, subject to adjustment as appropriate.

(b) *Initial and Total Base Assessment Rate Schedule for Large Institutions and Highly Complex Institutions.* The annual initial base assessment rate and total base assessment rate for a large insured depository institution or a highly complex insured depository institution shall be the rate prescribed in the following schedule:

	Large institutions
Initial base assessment rate	10–50
Unsecured debt adjustment	−5–0
Secured liability adjustment	0–25
Brokered deposit adjustment	0–10
TOTAL BASE ASSESSMENT RATE	5–85

All amounts are in basis points annually. Total base rates that are not the minimum or maximum rate will vary between these rates. All rates shown will increase 3 basis points on January 1, 2011, pursuant to the FDIC Restoration Plan adopted on September 29, 2009 (74 FR 51062 (Oct. 2, 2009)).

(1) *Initial Base Assessment Rate Schedule for Large Institutions and Highly Complex Institutions.* The annual initial base assessment rates for all large institutions and highly complex institutions shall range from 10 to 50 basis points.

(2) *Total Base Assessment Rate Schedule for Large Institutions and Highly Complex Institutions.* The annual total base assessment rates for all large institutions and highly complex institutions shall range from 5 to 85 basis points.

(c) *Total Base Assessment Rate Schedule adjustments and procedures*—(1) *Board Rate Adjustments.* The Board may increase or decrease the total base assessment rate schedule for all insured depository institutions up to a maximum increase of 3 basis points or a fraction thereof or a maximum decrease of 3 basis points or a fraction thereof (after aggregating increases and decreases), as the Board deems necessary. Any such adjustment shall apply uniformly to each rate in the total base assessment rate schedule. In no case may such Board rate adjustments result in a total base assessment rate that is mathematically less than zero or in a total base assessment rate schedule that, at any time, is more than 3 basis points above or below the total base assessment schedule for the Deposit Insurance Fund, nor may any one such Board adjustment constitute an increase or decrease of more than 3 basis points.

(2) *Amount of revenue.* In setting assessment rates, the Board shall take into consideration the following:

(i) Estimated operating expenses of the Deposit Insurance Fund;

(ii) Case resolution expenditures and income of the Deposit Insurance Fund;

(iii) The projected effects of assessments on the capital and earnings of the institutions paying assessments to the Deposit Insurance Fund;

(iv) The risk factors and other factors taken into account pursuant to 12 U.S.C. 1817(b)(1); and

(v) Any other factors the Board may deem appropriate.

(3) *Adjustment procedure.* Any adjustment adopted by the Board pursuant to this paragraph will be adopted by rulemaking, except that the Corporation may set assessment rates as necessary to manage the reserve ratio, within set parameters not exceeding cumulatively 3 basis points, pursuant to paragraph (c)(1) of this section, without further rulemaking.

(4) *Announcement.* The Board shall announce the assessment schedules and the amount and basis for any adjustment thereto not later than 30 days before the quarterly certified statement invoice date specified in § 327.3(b) of this part for the first assessment period for which the adjustment shall be effective. Once set, rates will remain in effect until changed by the Board.

6. Revise Appendix A to Subpart A of Part 327 to read as follows:

Appendix A to Subpart A

Method To Derive Pricing Multipliers and Uniform Amount

I. Introduction

The uniform amount and pricing multipliers are derived from:

- A model (the Statistical Model) that estimates the probability that a Risk Category I institution will be downgraded to a composite CAMELS rating of 3 or worse within one year;
- Minimum and maximum downgrade probability cutoff values, based on data from June 30, 2008, that will determine which small institutions will be charged the minimum and maximum initial base assessment rates applicable to Risk Category I; and
- The maximum initial base assessment rate for Risk Category I, which is four basis points higher than the minimum rate.

II. The Statistical Model

The Statistical Model is defined in equations 1 and 3 below:

Equation 1

$$\text{Downgrade}(0,1)_{i,t} = \beta_0 + \beta_1 (\text{Tier 1 Leverage Ratio}_T) + \beta_2 (\text{Loans past due 30 to 89 days ratio}_{i,t}) + \beta_3 (\text{Nonperforming asset ratio}_{i,t}) + \beta_4 (\text{Net loan charge-off ratio}_{i,t}) + \beta_5 (\text{Net income before taxes ratio}_{i,t}) + \beta_6 (\text{Adjusted brokered deposit ratio}_{i,t}) + \beta_7 (\text{Weighted average CAMELS component rating}_{i,t})$$

Where $\text{Downgrade}(01)_{i,t}$ (the dependent variable—the event being explained) is the incidence of downgrade from a composite rating of 1 or 2 to a rating of 3 or worse during an on-site examination for an institution i between 3 and 12 months after time t. Time t is the end of

a year within the multi-year period over which the model was estimated (as explained below). The dependent variable takes a value of 1 if a downgrade occurs and 0 if it does not.

The explanatory variables (regressors) in the model are six financial ratios and a weighted average of the "C," "A," "M," "E" and "L" component ratings. The six financial ratios included in the model are:

- Tier 1 leverage ratio
- Loans past due 30–89 days/Gross assets
- Nonperforming assets/Gross assets
- Net loan charge-offs/Gross assets
- Net income before taxes/Risk-weighted assets
- Brokered deposits/domestic deposits above the 10 percent threshold, adjusted for the asset growth rate factor

Table A.1 defines these six ratios along with the weighted average of CAMELS component ratings. The adjusted brokered deposit ratio ($B_{i,T}$) is calculated by multiplying the ratio of brokered deposits to domestic deposits above the 10 percent threshold by an asset growth rate factor that ranges from 0 to 1 as shown in Equation 2 below. The asset growth rate factor ($A_{i,T}$) is calculated by subtracting 0.4 from the four-year cumulative gross asset growth rate (expressed as a number rather than as a percentage), adjusted for mergers and acquisitions, and multiplying the remainder by 3⅓. The factor cannot be less than 0 or greater than 1.

Equation 2

$$B_{i,T} = \left(\frac{Brokered\ Deposits_{i,T}}{Domestic\ Deposits_{i,T}} - 0.10 \right) * A_{i,T}$$

Where

$$A_{i,T} = \left[\left(\frac{GrossAssets_{i,T} - GrossAssets_{i,T-4}}{GrossAssets_{i,T-4}} - 0.4 \right) * \frac{10}{3} \right],$$

subject to

$0 \le A_{i,r} \le 1$ and $B_{i,r} \ge 0$.

The component rating for sensitivity to market risk (the "S" rating) is not available for years prior to 1997. As a result, and as described in Table A.1, the Statistical Model is estimated using a weighted average of five component ratings excluding the "S" component. Delinquency and non-accrual data on government guaranteed loans are not available before 1993 for Call Report filers and before the third quarter of 2005 for TFR filers. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting delinquent or past-due government guaranteed loans from either the loans past due 30–89 days to gross assets ratio or the nonperforming assets to gross assets ratio. Reciprocal deposits are not presently reported in the Call Report or TFR. As a result, and as also described in Table A.1, the Statistical Model is estimated without deducting reciprocal deposits from brokered deposits in determining the adjusted brokered deposit ratio.

TABLE A.1—DEFINITIONS OF REGRESSORS

Regressor	Description
Tier 1 Leverage Ratio (%)	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.
Loans Past Due 30–89 Days/Gross Assets (%)	Total loans and lease financing receivables past due 30 through 89 days and still accruing interest divided by gross assets (gross assets equal total assets plus allowance for loan and lease financing receivable losses and allocated transfer risk).
Nonperforming Assets/Gross Assets (%)	Sum of total loans and lease financing receivables past due 90 or more days and still accruing interest, total nonaccrual loans and lease financing receivables, and other real estate owned divided by gross assets.
Net Loan Charge-Offs/Gross Assets (%)	Total charged-off loans and lease financing receivables debited to the allowance for loan and lease losses less total recoveries credited to the allowance to loan and lease losses for the most recent twelve months divided by gross assets.
Net Income before Taxes/Risk-Weighted Assets (%).	Income before income taxes and extraordinary items and other adjustments for the most recent twelve months divided by risk-weighted assets.
Adjusted brokered deposit ratio (%)	Brokered deposits divided by domestic deposits less 0.10 multiplied by the asset growth rate factor (which is the term $A_{i,T}$ as defined in equation 2 above) that ranges between 0 and 1.
Weighted Average of C, A, M, E and L Component Ratings.	The weighted sum of the "C," "A," "M," "E" and "L" CAMELS components, with weights of 28 percent each for the "C" and "M" components, 22 percent for the "A" component, and 11 percent for the "E" and "L" components. (For the regression, the "S" component is omitted.)

7. Revise Appendix B to Subpart A of Part 327 to read as follows:

Appendix B to Subpart A

Description of Scorecard Measures

(1) Scorecard Measures Applied to All Large Banks

Quantitative measures *(Data Source)*	Description
Tier 1 Common Capital Ratio *(Call/TFR Reports)*.	The ratio is calculated as Tier 1 capital less perpetual preferred stock and related surplus divided by average total assets less disallowed intangibles.
Concentration Measure	Concentration score takes a higher score of the following two:
(1) Higher-Risk Concentrations Measure *(LIDI)*.	The measure is a sum of following ratios squared: construction and development loans (C&D), leveraged loans, nontraditional mortgages, subprime consumer loans, and total exposure (outstanding loan balances and unfunded commitments) to top 20 single-name borrowers, all as a ratio to tier 1 capital and reserves.

Quantitative measures *(Data Source)*	Description
(2) Growth-Adjusted Portfolio Concentrations *(Call/TFR Reports)*.	The measure is calculated in following steps: (1) Concentration levels (as a ratio to total risk-based capital) are calculated for each broad portfolio category (C&D, other commercial real estate loans, residential mortgage (including mortgage-backed securities), commercial and industrial loans, credit card and other consumer loans). (2) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 and 1.5. If three years of data are not available, a growth factor of 1 would be assigned. (3) Risk weights are assigned to each category based on relative SCAP loss rates. (4) Concentration levels are multiplied by risk weights and growth factor and the resulting value for each portfolio is squared and summed. Both concentration measures are described in detail in Appendix C.
Core Earnings/Average Total Assets *(Call/TFR Reports)*.	Core earnings are defined as quarterly net income less extraordinary items and realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by a five-quarter average of total assets. If four quarters of data on core earnings are not available, data for quarters that are available would be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available would be averaged.
Credit Quality Measure:	Asset quality score takes a higher score of the following two:
a. Criticized and Classified Items/Tier 1 Capital and Reserves *(LIDI)*.	The sum of criticized and classified items divided by a sum of Tier 1 capital and reserves. Criticized and classified items include items with an internal grade of "Special Mention" or worse and include retail items under Uniform Retail Classification Guidelines, securities that are rated sub-investment grade, and marked-to-market counterparty positions with an internal grade of "Special Mention" or worse, or an external rating of sub-investment grade less credit valuation allowances (CVA). Criticized and classified items exclude loans and securities in trading books, and the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.
b. Underperforming Assets/Tier 1 Capital and Reserves *(Call/TFR Reports)*.	Sum of loans past due 30–89 days, loans past due 90+ days, nonaccrual loans, restructured loans, restructured 1–4 family loans, and ORE (excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions) divided by a sum of Tier 1 capital and reserves.
Core Deposits/Total Liabilities *(Call/TFR Reports)*.	The core deposit ratio is a sum of demand deposits, NOW accounts, MMDA, other savings deposits, CDs under $100M less insured brokered deposits under $100,000 divided by total liabilities.
Unfunded Commitments/Total Assets *(Call/TFR Reports)*.	Unfunded commitments are unused portions of commitments to make or purchase extensions of credit in the form of loans or participations in loans, lease financing receivables, or similar transactions and include unused commitments for home equity line of credit, commercial real estate, construction and land development loans either secured or not secured by real estate, securities underwriting and others, excluding unused commitments for credit card lines. Total amount of unfunded commitments is divided by total assets.
Liquid Assets/Short-term Liabilities (Liquidity Coverage Ratio) *(Call/TFR Reports)*.	Liquid assets are defined as the sum of cash and balances due from depository institutions, Federal funds sold and securities purchased under agreements to resell, and agency securities (securities issued by the U.S. Treasury, U.S. government agencies, and US government-sponsored enterprises) less securities sold under agreements to repurchase or agency securities, whichever is smaller. "Short-term" liabilities are defined as a sum of large CDs (larger than $100,000) with a remaining maturity of one year or less, fed funds purchased and repos, unsecured borrowings with a remaining maturity of one year or less, foreign deposits and unused commitments for asset-backed commercial paper with a remaining maturity of one year or less.
Potential Losses/Total Domestic Deposits (Loss Severity Measure) *(Call/TFR Reports)*.	The loss severity ratio is a ratio of potential losses to the DIF—as calculated in the FDIC's loss severity model—to domestic deposits. Appendix D describes the loss severity model in detail.
Secured Liabilities/Total Domestic Deposits *(Call/TFR Reports)*.	The secured liability ratio is a sum of secured liabilities (FHLB advances, securities sold under repurchase agreements, secured Federal funds purchased, and other secured borrowings) divided by domestic deposits.

(2) Scorecard Measures Applied to Highly Complex Institutions Only

Quantitative measures	Description
10-day 99% VaR/Tier 1 Capital (*LIDI Reports*).	The ratio is defined as 10-day 99%VaR based on banks' internal model divided by Tier 1 capital.
Short-term Funding/Total Assets *(Call/TFR Reports)*.	The short-term funding ratio is a ratio of a sum of Federal funds purchased and repos to total assets. If more granular maturity data are available, we may want to include non-deposit liabilities with a remaining maturity of three months or less.
Senior Bond Spread *(IDC)*	Quarterly average of median weekly spreads for senior bonds with three to ten years remaining to maturity issued by the parent company over comparable-maturity Treasuries.
Parent TCE Ratio (*9–Y Reports*)	The parent TCE ratio is a ratio of a sum of common stock, surplus, undivided profits, accumulated other comprehensive income, and other equity capital components less intangible assets to tangible assets (total assets less intangible assets).

8. Revise Appendix C to Subpart A of Part 327 to read as follows:

APPENDIX C TO SUBPART A

Concentration Measures

The concentration measure score is a higher of the two concentration scores: a higher-risk concentration measure and a growth-adjusted portfolio concentration measure.

1. Higher-Risk Concentration Measure

The higher-risk concentration measure is the sum of the squared value of concentrations in each of five risk areas and is calculated as:

$$H_i = \sum_{k=1}^{5} \left(\frac{\text{Amount of exposure}_{i,k}}{\text{Tier 1 Capital}_i} \right)^2$$

Where:

H is institution *i*'s higher-risk concentration measure and

k is a risk area.[1] The five risk areas (*k*) are defined as:

- Construction and development loans;
- Leveraged lending;
- Nontraditional mortgages;
- Subprime consumer loans; and
- Total exposure (outstanding loan balances, unfunded commitments and counterparty credit risk) to top 20 single-name borrowers.

Data on higher-risk lending, other than construction and development loans, are obtained through an examination process and defined according to the interagency guidance for a given product. A loan is considered to be leveraged when the obligor's post-financing leverage as measured by debt-to-assets, debt-to-equity, cash flow-to-total debt, or other such standards unique to particular industries significantly exceeds industry norms for leverage.[2] Nontraditional mortgages are mortgage products that allow borrowers to defer payment of principal and, sometimes, interest. These products include "interest-only" mortgages and "payment option"' adjustable-rate mortgages.[3] Subprime loans are consumer loans that are typically made to borrowers with weakened credit histories, including a combination of payment delinquencies, charge-offs, judgments, and bankruptcies who may also display reduced repayment capacity as measured by credit scores, debt-to-income ratios, or other criteria.[4]

2. Growth-adjusted Portfolio Concentration Measure

The growth-adjusted concentration measure is the sum of the squared values of concentrations in each of seven portfolios, each of the squared values being first adjusted for growth and risk weights before summing. The measure is calculated as:

$$N_i = \sum_{k=1}^{7} \left[g_{i,k} \times w_k \times \left(\frac{\text{Amount of exposure}_{i,k}}{\text{Total Capital}_i} \right) \right]^2$$

Where:

N is institution *i*'s growth-adjusted portfolio concentration measure[5];

k is a portfolio;

g is a growth factor for institution *i*'s portfolio *k;* and,

w is a risk weight for portfolio *k.*

The seven portfolios (*k*) are defined based on the Call Report data and they are:

- First-lien residential mortgages and mortgage-backed securities;
- Closed-end junior liens and home equity lines of credit (HELOCs);
- Construction and development loans;
- Other commercial real estate loans;
- Commercial and industrial loans;
- Credit card loans; and
- Other consumer loans.

The growth factor, *g,* is based on a three-year merger-adjusted growth rate for a given portfolio; *g* ranges from 1 to 1.5 where a 20 percent growth rate equals a factor of 1 and an 80 percent growth rate equals a factor of 1.5.[6] [7] For growth rates less than 20 percent, *g* is 1; for growth rates greater than 80 percent, *g* is 1.5. For growth rates of 20 percent to 80 percent, the growth factor is calculated as:

$$g_{i,k} = 1 + \left[\left(G_{i,k} - 0.20 \right) \times \frac{1.5 - 1.0}{0.8 - 0.2} \right] = 1 + \left[\frac{5}{6} \left(G_{i,k} - 0.20 \right) \right]$$

Where

$$G_{i,k} = \frac{V_{i,k,t}}{V_{i,k,t-12}} - 1,$$

V is the portfolio amount as reported on the Call Report

and t is the quarter for which the assessment is being determined.

The risk weight for each portfolio reflects relative loss rates and is based on the mid-point of two-year cumulative indicative loss rate ranges used in the adverse scenario for the interagency Supervisory Capital Assessment Program (SCAP) in early 2009.[8] [9]

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[1] The high-risk concentration measure is rounded to two decimal points.

[2] *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[3] *http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html.*

[4] Generally, subprime borrowers will display a range of credit risk characteristics that may include one or more of the following: (1) Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months; (2) judgment, foreclosure, repossession, or charge-off in the prior 24 months; (3) bankruptcy in the last 5 years; (4) relatively high default probability as evidenced by, for example, a Fair Isaac and Co. risk score (FICO) of 660 or below (depending on the product/collateral), or other bureau or proprietary scores with an equivalent default probability likelihood; and/or (5) debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income. *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[5] The growth-adjusted portfolio concentration measure is rounded to two decimal points.

[6] The cut-off values of 0.2 and 0.8 correspond to about 45th percentile and 80th percentile among the large institutions, respectively, based on the data from 2000 to 2009.

[7] The growth factor is rounded to two decimal points.

[8] Board of Governors of the Federal Reserve System, "The Supervisory Capital Assessment Program: Overview of Results," May 7, 2009. *http://www.federalreserve.gov/newsevents/speech/bcreg20090507a1.pdf.*

[9] The risk weights are based on loss rates for each portfolio relative to the loss rate for C&I loans, which is given a risk weight of 1.

TABLE C.1—TWO-YEAR CUMULATIVE INDICATIVE LOSS RANGE: SCAP ADVERSE SCENARIO

Portfolio	Two-year cumulative loss range			Risk weights
	Minimum	Maximum	Midpoint	
First-Lien Mortgages*	4.3	5.8	5.1	0.8
Second/Junior Lien Mortgages	12.0	16.0	14.0	2.2
Commercial and Industrial (C&I) Loans	5.0	8.0	6.5	1.0
Construction and Development (C&D) Loans	15.0	18.0	16.5	2.5
Commercial Real Estate Loans, excluding C&D**	7.6	9.4	8.5	1.3
Credit Card Loans	18.0	20.0	19.0	2.9
Other Consumer Loans	8.0	12.0	10.0	1.5

* Assumes that 80 percent of first liens are prime and the remaining 20 percent at Alt-A.

** Assumes that 80 percent of CRE portfolio are nonfarm non-residential and the remaining 20 percent are multifamily. The allocation is based on the aggregate bank data.

9. Add Appendix D to Subpart A of Part 327 to read as follows:

Appendix D to Subpart A

Description of the Loss Severity Model

The FDIC's loss severity model applies a standardized set of assumptions to an institution's balance sheet for a given quarter to measure possible losses to the FDIC in the event of an institution's failure. To determine an institution's loss severity rate, the size and composition of an institution's liabilities are adjusted to reflect expected changes (due to uninsured deposit and other unsecured liability runoff and growth in insured deposits) as an institution approaches failure. Assets are then reduced to match any reduction in liabilities.[1] The institution's asset values are then further reduced until the Tier 1 leverage ratio reaches 2 percent.[2] Asset adjustments are made pro rata to asset categories to preserve the institution's relative proportion of assets by asset categories. Assumptions regarding asset losses at failure and the extent of secured liabilities are then applied to the estimated balance sheet at failure to determine whether the institution has enough unencumbered assets to cover domestic deposits. Any projected shortfall is divided by current domestic deposits to obtain an end-of-period loss severity ratio, which is then averaged over the three most recent quarters to produce the loss severity measure for the scorecard.

Runoff and Capital Adjustment Assumptions

Table D.1 contains run-off assumptions.

TABLE D.1—RUNOFF RATE ASSUMPTIONS

Liability type	Runoff rate* (percent)
Insured Deposits	−32.0

TABLE D.1—RUNOFF RATE ASSUMPTIONS—Continued

Liability type	Runoff rate* (percent)
Uninsured Deposits	28.6
Foreign Deposits	80.0
Fed Funds Purchased	40.0
Repurchase Agreements	25.0
Trading Liabilities	50.0
Federal Home Loan Bank Borrowings <= 1 Year	25.0
Federal Home Loan Bank Borrowings > 1 Year	0.0
Other Borrowings <= 1 Year	50.0
Other Borrowings > 1 Year	0.0
Subordinated Debt and Limited Liability Preferred Stock	15.0
Other Liabilities	0.0

* A negative rate implies growth.

Given the resulting total liabilities after runoff, assets are then reduced pro rata to preserve the relative amount of assets in each of the following asset categories and to achieve a Tier 1 leverage of 2 percent:

- Cash and Interest Bearing Balances;
- Trading Account Assets;
- Fed Funds Sold and Repurchase Agreements;
- Treasury and Agency Securities;
- Municipal Securities;
- Other Securities;
- Construction and Development Loans;
- Nonresidential Real Estate Loans;
- Multifamily Real Estate Loans;
- 1–4 Family Closed-End First Liens;
- 1–4 Family Closed-End Junior Liens;
- Revolving Home Equity Loans; and
- Agricultural Real Estate Loans.

Recovery Value of Assets at Failure

Table D.2 shows loss rates applied to each of the asset categories as adjusted above.

TABLE D.2—ASSET LOSS RATE ASSUMPTIONS

Asset category	Loss rate (percent)
Cash and Interest Bearing Balances	0.0
Trading Account Assets	0.0
Fed Funds Sold and Repurchase Agreements	0.0
Treasury and Agency Securities	0.0
Municipal Securities	10.0
Other Securities	15.0
Construction and Development Loans	38.2
Nonresidential Real Estate Loans	17.6
Multifamily Real Estate Loans	10.8
1–4 Family Closed-End First Liens	19.4
1–4 Family Closed-End Junior Liens	41.0
Revolving Home Equity Loans	41.0
Agricultural Real Estate Loans	19.7
Agricultural Loans	11.8
Commercial and Industrial Loans	21.5
Credit Card Loans	18.3
Other Consumer Loans	18.3
All Other Loans	51.0
Other Assets	75.0

Secured Liabilities at Failure

Table D.3 shows the percentage of each liability category that is assumed to be secured.

TABLE D.3—SECURED LIABILITY ASSUMPTIONS

Liability type	Percentage secured at failure (percent)
Foreign Deposits	100
Repurchase Agreements	100
Federal Home Loan Bank Borrowings <= 1 Year	100

[1] In most cases, the model would yield reductions in liabilities and assets prior to failure. Exceptions may occur for institutions primarily funded through insured deposits, which the model assumes to grow prior to failure.

[2] Of course, in reality, runoff and capital declines occur more or less simultaneously as an institution approaches failure. The loss severity measure assumptions simplify this process for ease of modeling.

TABLE D.3—SECURED LIABILITY ASSUMPTIONS—Continued

Liability type	Percentage secured at failure (percent)
Federal Home Loan Bank Borrowings > 1 Year	100
Other Borrowings <= 1 Year	50
Other Borrowings > 1 Year	50

Loss Severity Ratio Calculation

The FDIC's loss given failure (LGD) is calculated as:

$$LGD = \frac{InsuredDeposits_{Failure}}{DomesticDeposits_{Failure}} \times \left(DomesticDeposits_{Failure} - RecoveryValueofAssets_{Failure} + SecuredLiabilities_{Failure} \right)$$

An end-of-quarter loss severity ratio is LGD divided by total domestic deposits at quarter-end and the loss severity measure for the scorecard is an average of end-of-period loss severity ratio for three most recent quarters.

9. Add Appendix E to Subpart A of Part 327 to read as follows:

Appendix E to Subpart A

Additional Risk Considerations for Large Institutions

Information Source	Examples of Associated Risk Indicators or Information
Additional Performance Indicators	*Adequacy of Capital to Withstand Stress (Level and Trend)* • Regulatory capital ratios • Capital composition • Unrealized losses on securities • Dividend payout ratios • Internal capital growth rates relative to asset growth • Robustness of internal stress testing models and reserve methodology *Adequacy and Stability of Earnings to Withstand Stress (Level and Trend)* • Return on assets and return on risk-adjusted assets • Concentration of revenue sources • Earning composition including noncash earnings e.g., mortgage servicing rights (MSR), income from interest reserves) relative to core income • Net interest margins, funding costs and volumes, earning asset yields and volumes • Loan loss provisions relative to problem loans • Historical volatility of various earnings sources *Ability to Withstand Credit-Related Stress (Level and Trend)* • Loan and securities portfolio composition and volume of higher risk lending activities or securities • Loan performance measures (past due, nonaccrual, classified and criticized, and renegotiated loans) • Portfolio characteristics such as internal loan rating and credit score distributions, internal estimates of default, internal estimates of loss given default, and internal estimates of exposures in the event of default • Portfolio underwriting characteristics and trends (including portfolio growth) • Robustness of credit administration and credit risk monitoring (e.g., internal loan classification) • Off-balance sheet credit exposure measures (unfunded loan commitments, securitization activities, counterparty derivatives exposures) and hedging activities *Ability to Withstand Liquidity-Related Stress (Level and Trend)* • Composition of deposit and non-deposit funding sources • Liquid resources relative to short-term obligations, undisbursed credit lines, and contingent liabilities • Reliance on securitization as a funding source • Level of contingent liabilities • Robustness of contingency or emergency funding strategies and analyses *Ability to Withstand Interest Rate Shocks* • Maturity and repricing information on assets and liabilities, interest rate risk analyses • Robustness of internal interest rate models *Ability to Withstand Trading Stress (Level and Trend)* • Assessment of trading desk composition and revenue dependency (prop trading compared to customer flow, liquid products compared to illiquid products) • Assessment of VaR framework, stress testing framework and results • Appropriateness of desk limits. *Ability to Withstand Stress to Counterparties (Level and Trend)* • Gross current exposure (Top 5 and Total by Client Types and Ratings) to capital • Current net exposure (Top 5 and Total by Client Types and Ratings) to capital • Peak potential exposure (Top 5 and Total by Client Types and Ratings) to capital • Exposure aggregation reporting • Margining policies, netting enforceability and hedging capabilities. *Market indicator of the institution's ability to withstand stress (Level and Trend)*

Information Source	Examples of Associated Risk Indicators or Information
	• Subordinated debt spreads • Credit default swap spreads • Parent's equity price volatility • Market-based measures of default probabilities • Rating agency watch lists • Market analyst reports
Additional Loss Severity Indicators	• Ability to identify and describe discreet business units within the banking legal entity • Funding structure considerations relating to the order of claims in the event of liquidation (including the extent of subordinated claims and priority claims). • Volumes of brokered deposits, potentially more volatile deposits such as Internet or money desk or high-cost deposits. • Potential for significant ring-fencing of foreign assets. • Volume of hard-to-value assets (Level 3 assets)

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix 1

Statistical Analysis of Measures

The risk measures included in the scorecard and the weights assigned to those measures are generally based on the results of an ordinary least square (OLS) model, and in some cases, a logistic regression model.

The OLS model estimates how well a set of risk measures in 2005 through 2009 can predict the FDIC's view, based on its experience and judgment, of the proper rank ordering of risk (the expert judgment ranking) for large institutions as of year-end 2009.

The OLS model is specified as:

$$Ranking_{i,2009} = \beta_0 + \sum_{k=1}^{n} \beta_k \times Score_{i,k,t}$$

Where:

k is a risk measure;

n is the number of risk measures; and

t is the quarter that is being assessed

The logistic regression model estimates how well the same set of risk measures in 2005 through 2008 can predict whether a large bank fails and it is specified as:

$$Fail(0,1)_i = \beta_0 + \sum_{k=1}^{n} \beta_k \times Score_{i,k,t}$$

Where:

Fail is whether an institution *i* failed on or prior to year-end 2009 or not.[1]

Selecting Risk Measures[2]

To select the risk measures for the scorecard, the FDIC first selected a set of financial measures that were deemed to be most relevant to assessing large institutions' ability to withstand stress. Those measures were converted to a score between 0 and 100 and then regressed against the expert judgment ranking. A stepwise selection method was used to select risk measures for each year that were statistically significant at a 15 percent confidence level or better.

Table1.1 shows the risk measures that were considered and descriptive statistics of scores for those measures for large institutions based on data from 2005–2009. Most of these measures, other than concentration and credit quality measures, are based on report of condition and income data and defined in Appendix 1. The concentration measure is described in detail in Appendix 2. A distance-to-default measure is calculated as a sum of Tier 1 capital and 12-quarter average core earnings—both divided by total assets—divided by the 12-quarter standard deviation in core earnings. The three-year merger-adjusted asset growth rate (AG) is calculated as:

$$AG = \frac{Asset_t}{Asset_{t-12}}$$

Where t is the quarter for which the assessment is being determined.

[1] For the purpose of regression analysis, large institutions that received significant government support or merged with another entity with government support.

[2] The FDIC has conducted a number of robustness tests with alternative ratios for capital and earnings, a log transformation of several variables—the liquidity coverage ratio, the brokered deposit ratio and the growth-adjusted concentration ratio—and alternative dependent variables—CAMELS and the FDIC's internal risk ratings. These robustness tests show that the same set of variables are generally statistically significant in most models; that converting to a score from a raw ratio generally resolves any potential concern related to a nonlinear relationship between the dependent variable and several explanatory variables; and, finally, that alternative ratios for capital and earnings are not better in predicting expert judgment ranking or failure.

TABLE 1.1—DESCRIPTIVE STATISTICS OF RISK MEASURE SCORES

Risk measure	Average score	Median score	Standard deviation of scores
Weighted average CAMELS rating	41.4	39.9	14.3
Tier 1 common leverage ratio	65.4	74.7	30.5
Distance-to-default	62.2	73.7	34.8
Concentration measure	52.2	46.0	36.3
Three-year merger-adjusted asset growth rate	27.0	15.7	30.5
Core earnings/average assets	56.6	55.4	30.0
Credit quality measure	43.2	33.7	35.2
Core deposits/total liabilities	41.5	33.2	32.9
Liquidity coverage ratio	75.1	89.9	31.5
Unfunded commitments/total assets	49.1	51.4	32.1
Short-term funding/total assets	32.8	24.8	31.8
Loss severity ratio	43.3	43.5	30.0
Secured liabilities/total domestic deposits	31.3	21.2	31.7
Brokered deposits/total domestic deposits	22.3	5.7	33.8

Table 1.2 shows the results of the OLS models after a stepwise selection process and the statistical significance of each measure for years 2005 through 2009. The dependent variable for the model is an expert judgment ranking as of year-end 2009. The measures numbered (1) through (9) are statistically significant and have a positive sign in regression models for multiple years. Those measures include a weighted average CAMELS rating, a concentration measure, a core earnings to average total assets ratio, a credit quality measure, a core deposits to total liabilities ratio, an unfunded commitments to total assets ratio, a liquid assets to short-term liabilities ratio, a loss severity measure, and a secured liabilities to total domestic deposits ratio. The measures without coefficients are those that are not statistically significant at a 15 percent confidence level.

Table 1.2

OLS Stepwise Regression Results

Dependent Variable = Expert Judgment Ranking as of Year-end 2009

	Measure Scores	2005	2006	2007	2008	2009
(1)	Weighted average CAMELS rating	1.13 *** (0.12)	0.76 *** (0.13)	0.40 *** (0.11)	0.32 *** (0.07)	0.77 *** (0.05)
	Tier 1 common capital ratio					
	Distance-to-default	-0.26 *** (0.03)	-0.13 *** (0.03)		0.07 * (0.04)	0.19 *** (0.04)
(2)	Concentration measure	0.27 *** (0.03)	0.29 *** (0.03)	0.36 *** (0.03)	0.19 *** (0.03)	0.05 ** (0.03)
	3-year merger-adjusted asset growth			-0.11 *** (0.04)	-0.12 *** (0.03)	-0.06 ** (0.03)
(3)	Core Earnings/Average Total Assets			0.18 *** (0.04)	0.15 *** (0.03)	0.06 * (0.03)
(4)	Credit quality measure	0.38 *** (0.05)	0.34 *** (0.05)	0.31 *** (0.04)	0.38 *** (0.04)	0.34 *** (0.03)
(5)	Core deposits/total liabilities	0.22 *** (0.04)	0.18 *** (0.05)	0.11 *** (0.04)	0.20 *** (0.04)	
(6)	Unfunded Commitments/Total Assets	0.09 *** (0.03)	0.12 *** (0.04)	0.15 *** (0.03)	0.06 * (0.03)	-0.07 ** (0.03)
(7)	Liquid Assets/Short-term Liabilities			0.16 *** (0.04)		0.07 ** (0.03)
	Short-term funding/total assets		-0.06 (0.04)	-0.09 *** (0.03)	-0.06 ** (0.03)	-0.07 ** (0.03)
(8)	Loss severity measure	0.17 *** (0.04)	0.17 *** (0.05)	0.19 *** (0.04)	0.17 *** (0.03)	0.06 *** (0.03)
(9)	Secured liabilities/total domestic deposits	0.23 *** (0.04)	0.18 *** (0.05)			0.07 ** (0.03)
	Brokered deposits/total domestic deposits					0.12 *** (0.03)
	No. Obs	450	454	455	450	436
	Adjust. R2	0.55	0.50	0.62	0.71	0.76

Note Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Table 1.3 shows the results of the logistic regression models with a stepwise selection process, and the statistical significance of each measure for years 2005 through 2008. The dependent variable for the model is whether an institution failed before year-end 2009 or not. The risk measures numbered (1) through (5) are statistically significant and have a positive sign in regression models for multiple years. Two additional measures—credit quality measure and unfunded commitments/total assets— are significant in a regression model for a single year. One measure—a Tier 1 common capital ratio—that is not significant in the OLS model are significant in the logistic regression model.

Table 1.3

Logistic Stepwise Regression Results

Dependent Variable (1 = Failed; 0= Not failed)

	Measure Scores	2005	2006	2007	2008	2009
(1)	Weighted average CAMELS rating	0 06 *** (0.02)	0.06 *** (0.02)	0.13 *** (0.03)	0.07 *** (0.02)	0.09 *** (0.02)
(2)	Tier 1 common capital ratio	0.02 ** (0.01)		0.03 *** (0.01)		0.06 *** (0.02)
	Distance-to-default					
(3)	Concentration measure	0.04 *** (0.01)	0.06 *** (0.01)	0.08 *** (0.02)	0.06 *** (0.01)	
	3-year merger-adjusted asset growth					
	Core Earnings/Average Total Assets			-0.03 ** (0.01)		
	Credit quality measure				0.08 *** (0.03)	
	Core deposits/total liabilities		-0.03 *** (0.01)			
(4)	Unfunded Commitments/Total Assets	0.05 ** (0.02)	0.07 ** (0.03)	0.04 *** (0.01)		
	Liquid Assets/Short-term Liabilities		0.02 ** (0.01)			
	Short-term funding/total assets	-0.03 *** (0.01)	-0.05 *** (0.01)	-0.09 *** (0.02)	-0.05 *** (0.01)	-0.04 *** (0.01)
	Loss severity measure	0.01 *** (0.01)			-0.04 *** (0.01)	-0.05 *** (0.01)
(5)	Secured liabilities/total domestic deposits		0.04 *** (0.01)	0.03 *** (0.01)	0.03 *** (0.01)	0.02 *** (0.01)
	Brokered deposits/total domestic deposits			-0.03 *** (0.01)	-0.03 *** (0.01)	
	Model Log Likelihood	-114.57	-90.16	-66.21	-58.65	-50.95

Note: Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Determining Risk Measures Weights

Table 1.4 shows the results of the OLS model with all ten risk measures that were significant in predicting either the expert judgment ranking or failure. The weights assigned to each of ten risk measures in the scorecard are generally, but not entirely, based on the coefficients for OLS models for 2006 and 2007. For example, the coefficient for the core earnings to average total asset ratio is 0.16 in 2007, and the proposal assigns a weight of 15 percent to core earnings to calculate an institution's ability to withstand asset-related stress score. The coefficients for the concentration measure and credit quality measure are 0.34, and a 35-percent weight is assigned to each of these measures. The coefficient for the liquid assets to short-term funding (liquidity coverage) ratio is 0.14 in 2007 and the proposal assigns a weight of 20 percent to the liquidity coverage ratio to calculate an institution's ability to withstand funding-related stress score. The coefficients for the core deposits to total liabilities ratio and the unfunded commitments to total assets ratio are 0.20 and 0.12, respectively, in 2006 (and 0.10 and 0.16, respectively, in 2007), and a 40-percent weight is assigned to both these measures to calculate an institution's ability to withstand funding-related stress score.

The weights assigned to the Tier 1 common capital ratio, the 10-day 99-percent VaR to Tier 1 capital ratio, and the short-term funding to total assets ratio are not based on the OLS regression. For the Tier 1 common capital ratio, the 15-percent weight assigned in the large institution scorecard (and the 10-percent weight assigned in the highly complex institution scorecard) reflects its importance in predicting bank failure. A 10-day 99-percent VaR to Tier 1 capital ratio is a consistent measure of market risk that is important for highly complex institutions. Finally, while the OLS regression does not show a statistical significance, reliance on short-term funding had an effect on how highly complex institutions fared over the past four years.

Table 1.4

OLS Regression Results: Proposed Measures

Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Measure Scores	2005	2006	2007	2008	2009
Weighted Average CAMELS	0.89 ***	0.64 ***	0.41 ***	0.36 ***	0.89 ***
	(0.12)	(0.14)	(0.12)	(0.08)	(0.05)
Tier 1 common capital ratio	0.06	0.08 *	0.02	0.01	-0.01
	(0.05)	(0.05)	(0.04)	(0.04)	(0.03)
Concentration Measure	0.27 ***	0.29 ***	0.34 ***	0.18 ***	0.07 **
	(0.03)	(0.03)	(0.03)	(0.03)	(0.03)
Core Earnings/Average Total Assets	-0.05	0.02	0.16 ***	0.16 ***	0.13 ***
	(0.05)	(0.05)	(0.04)	(0.03)	(0.03)
Credit quality measure	0.26 ***	0.28 ***	0.34 ***	0.42 ***	0.36 ***
	(0.06)	(0.05)	(0.04)	(0.03)	(0.03)
Core deposits/total liabilities	0.16 ***	0.20 ***	0.10 **	0.17 ***	0.11 ***
	(0.05)	(0.05)	(0.05)	(0.04)	(0.04)
Unfunded Commitments/Total Assets	0.06	0.12 ***	0.16 ***	0.06 *	-0.06 **
	(0.04)	(0.04)	(0.03)	(0.03)	(0.03)
Liquid Assets/Short-term Liabilities	0.06	0.02	0.14 ***	0.03	0.04
	(0.05)	(0.04)	(0.04)	(0.03)	(0.03)
Loss severity measure	0.21 ***	0.21 ***	0.22 ***	0.17 ***	0.07 **
	(0.04)	(0.05)	(0.05)	(0.04)	(0.03)
Secured liabilities/total domestic deposits	0.17 ***	0.10 *	-0.04	0.01	-0.03
	(0.05)	(0.05)	(0.05)	(0.04)	(0.04)
No. Obs	453	455	455	450	434
Adjust. R2	0.49	0.49	0.61	0.69	0.74

Note: Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

OLS regression results: CAMELS and the Current Small Bank Financial Ratios

Table 1.5 shows the results of the OLS regression model with the weighted average CAMELS rating only. These results show that while the weighted average CAMELS rating is statistically significant in predicting an expert judgment ranking as of year-end 2009, it only explains a small percentage of the variation in the year-end 2009 expert judgment ranking—particularly in models for 2005 (10 percent) through 2007 (19 percent).

Table 1.5

OLS Regression Results: Weighted Average CAMELS

Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Variable	2005	2006	2007	2008	2009
Weighted Average CAMELS	27.40 ***	30.44 ***	34.51 ***	36.08 ***	36.05 ***
	(3.78)	(3.65)	(3.34)	(2.13)	(1.51)
No. Obs	439	445	446	439	421
Adjust. R2	0.10	0.13	0.19	0.40	0.58

Note: Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Table 1.6 shows the results of the OLS regression model with a weighted average CAMELS rating and the current small bank financial ratios. These results show that adding financial ratios improves the ability to predict the year-end 2009 expert judgment ranking; however, the improvement is not as significant as in the model with proposed measures. For example, in 2006, the model with current small bank financial ratios would have predicted slightly over 20 percent of the variation in the current expert judgment ranking. This compares to nearly 50 percent for the model with proposed measures.

Table 1.6

OLS Regression Results: Current Small Bank Financial Ratios

Dependent Variable = Expert Judgment Ranking as of Year-end 2009

Measure Scores	2005	2006	2007	2008	2009
Weighted average CAMELS rating	24.53 ***	23.18 ***	22.92 ***	22.19 ***	25.87 ***
	(3.73)	(3.78)	(3.70)	(2.96)	(2.29)
Tier 1 Leverage Ratio	-0.43 **	-0.47 **	-1.23 ***	-0.45	-0.05
	(0.19)	(0.22)	(0.31)	(0.36)	(0.29)
Loans Past Due 30-89 Days/Gross Assets	7.81 **	16.02 ***	9.32 ***	8.81 ***	5.16 ***
	(3.90)	(3.53)	(1.86)	(2.22)	(1.45)
Nonperforming Assets/Gross Assets	30.00 ***	9.97 ***	5.00 ***	2.15 **	2.60 ***
	(6.36)	(3.32)	(1.60)	(0.91)	(0.65)
Net Loan Charge-Offs/Gross Assets	-14.21 ***	-12.38 ***	-3.89	-3.03 **	-1.19
	(2.88)	(2.91)	(2.51)	(1.45)	(0.74)
Net Income before Taxes/Risk-Weighted Asse	-0.03	-0.58	-1.94 **	-0.95 **	-0.25 *
	(0.67)	(0.63)	(0.80)	(0.43)	(0.13)
Adjusted Brokered Deposit Ratio	0.16 ***	0.12 **	0.17 ***	0.12 ***	0.08 **
	(0.06)	(0.06)	(0.05)	(0.04)	(0.04)
No. Obs	445	451	452	445	427
Adjust. R2	0.19	0.21	0.32	0.48	0.64

Note: Standard error in parenthesis

* Significant at the 10% level ** Significant at the 5% Level *** Significant at the 1% Level

Appendix 2

Conversion of Total Score Into Initial Base Assessment Rate

The formula for converting an institution's total score into an initial assessment rate is based on a single-variable logistic regression model, which uses an institution's total score as of year-end 2006 to predict whether the institution has failed on or before year-end 2009. The logistic model is specified as:

$$\text{Fail}(0,1)_i = -7.7660 + (0.0875 \times \text{Score}_{i,2006})$$

Where:

Fail is whether an institution *i* failed on or before year-end 2009 or not; and [3]

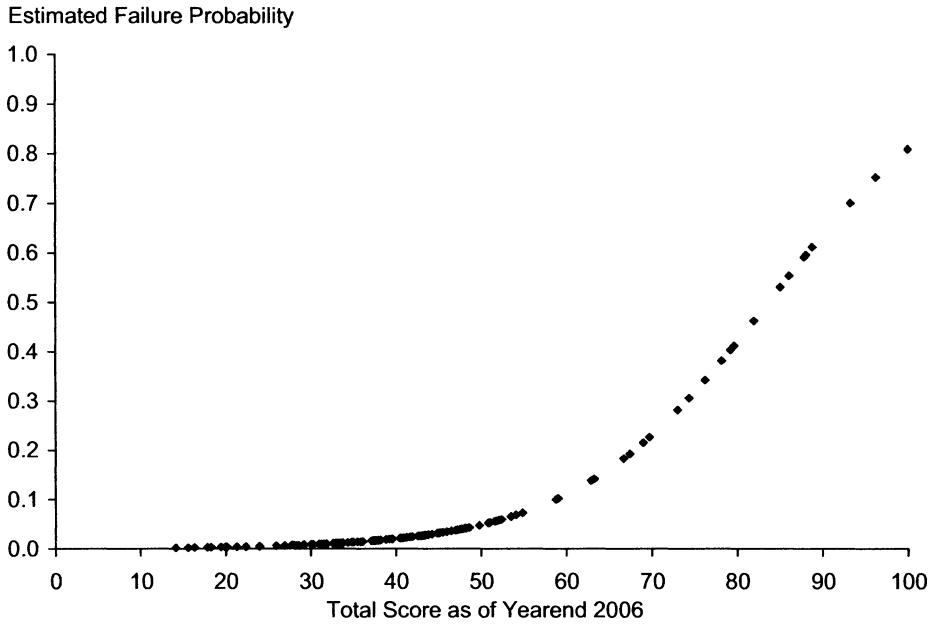
Score is an institution *i*'s total score as of year-end 2006.

The plotted points in Chart 5.1 show the estimated failure probabilities for the actual total scores using the logistic model and the results are nonlinear.

[3] For the purpose of regression analysis, large institutions that received significant government support or merged with another entity with government support are deemed to have failed.

Chart 2.1

Estimated Failure Probabilities Based on Total Score as of Year-end 2006



The proposed calculation of the initial assessment rates approximates this nonlinear relationship for scores between 30 and 90. A score of 30 or lower results in the minimum initial base assessment rate and a score of 90 or higher results in the maximum initial base assessment rate. Assuming an assessment rate range of 40 basis points, the initial base assessment rate for an institution with a score greater than 30 and less than 90 would be:

$$Rate = MinimumRate - 0.165289 + \left(68.02027 \times \left(\frac{Score}{100}\right)^5\right)$$

Appendix 3

Analysis of the Projected Effects of the Payment of Assessments on the Capital and Earnings of Insured Depository Institutions

This analysis estimates the effect in 2010 of deposit insurance assessments on the equity capital and profitability of all insured institutions, based on the total base assessment rates adopted in the final rule. For purposes of determining pre-tax, pre-assessment income in 2010, the analysis assumes that income in 2010 will equal annualized income for the second half of 2009, adjusted for mergers.

While deposit insurance assessments (whatever the rate) generally will result in reduced institution profitability and capitalization compared to the absence of assessments, the reduction will not necessarily equal the full amount of the assessment. Two factors can mitigate the effect of assessments on institutions' profits and capital. First, a portion of the assessment may be transferred to customers in the form of higher borrowing rates, increased service fees and lower deposit interest rates. Since information is not readily available on the extent to which institutions are able to share assessment costs with their customers, however, this analysis assumes that institutions bear the full after-tax cost of the assessment. Second, deposit insurance assessments are a tax-deductible operating expense; therefore, the assessment expense can lower taxable income. This analysis considers the effective after-tax cost of assessments in calculating the effect on capital.

An institution's earnings retention and dividend policies also influence the extent to which assessments affect equity levels. If an institution maintains the same dollar amount of dividends when it pays a deposit insurance assessment as when it does not, equity (retained earnings) will be less by the full amount of the after-tax cost of the assessment. This analysis instead assumes that an institution will maintain its dividend rate (that is, dividends as a fraction of net income) unchanged from the weighted average rate reported over the four quarters ending December 31, 2009. In the event that the ratio of equity to assets falls below 4 percent, however, this assumption is modified such that an institution retains the amount necessary to achieve a 4 percent minimum and distributes any remaining funds according to the dividend payout rate.

The proposed changes involve increases in premiums for some institutions and reductions in premiums for other institutions. Because overall revenue remains almost constant, the effect on aggregate earnings and capital is small. Projections show that imposition of the new premiums will increase aggregate capital by 2 one-hundredths of one percent (0.02 percent) over one year. For institutions whose initial earnings are positive, the change in premiums will increase earnings by an average of 0.87 percent (on an asset weighted basis). For institutions whose initial earnings are negative, the change in premiums will increase losses by an average of 0.85 percent (on an asset weighted basis).

There are two institutions for which the imposition of the new premiums would make a critical difference that would cause their tier 1 capital ratio to fall below 2 percent over a one-year horizon. A check was also made whether the imposition of the new premiums would make a difference in whether an institution's equity-to-capital ratio would fall below 4 percent in a one-year horizon, but there are no institutions critically affected in this way.

Among current Risk Category I institutions, 6,030 institutions' assessment rates would

decrease, 28 institutions' assessment rates would increase and 2 institutions' assessment rates would remain unchanged. All of the institutions whose rates would increase are large institutions as currently defined. For institutions whose assessment rates would decrease and whose earnings would otherwise be positive, earnings would increase by an average of 1.2 percent (on an asset weighted basis). For institutions whose assessment rates would decrease and whose earnings would otherwise be negative, losses would decline by an average of 1.0 percent (on an asset weighted basis). For institutions whose assessment rates would increase and whose earnings would otherwise be positive, earnings would decrease by an average of 1.6 percent. For institutions whose assessment rates would increase and whose earnings would otherwise be negative, losses would increase by an average of 4.8 percent.

Among current Risk Category II institutions, 11 institutions' assessment rates would decrease, 16 institutions' assessment rates would increase and 1,182 institutions' assessment rates (including the rates for all small Risk Category II institutions) would remain unchanged. For institutions whose assessment rates would decrease and whose earnings would otherwise be positive, earnings would increase by an average of 25.5 percent (on an asset weighted basis). For institutions whose assessment rates would decrease and whose earnings would otherwise be negative, losses would decline by an average of 2.1 percent (on an asset weighted basis). For institutions whose assessment rates would increase and whose earnings would otherwise be positive, earnings would decrease by an average of 2.5 percent (on an asset weighted basis). For institutions whose assessment rates would increase and whose earnings would otherwise be negative, losses would increase by an average of 4.1 percent (on an asset weighted basis).

Among current Risk Category III and IV institutions, 728 out of 729 institutions' assessment rates would increase. For institutions whose assessment rates would increase and whose earnings would otherwise be positive, earnings would be reduced by an average of 0.9 percent (on an asset weighted basis). For institutions whose assessment rates would increase and whose earnings would otherwise be negative, losses would increase by an average of 1.0 percent (on an asset weighted basis).

By order of the Board of Directors.

Dated at Washington, DC, this 13th day of April 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4573/P.L. 111–158

Haiti Debt Relief and Earthquake Recovery Act of 2010 (Apr. 26, 2010; 124 Stat. 1121)

H.R. 4887/P.L. 111–159

TRICARE Affirmation Act (Apr. 26, 2010; 124 Stat. 1123)

S.J. Res. 25/P.L. 111–160

Granting the consent and approval of Congress to amendments made by the State of Maryland, the Commonwealth of Virginia, and the District of Columbia to the Washington Metropolitan Area Transit Regulation Compact. (Apr. 26, 2010; 124 Stat. 1124)

Last List April 20, 2010

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

TABLE OF EFFECTIVE DATES AND TIME PERIODS—MAY 2010

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Date of FR publication	15 days after publication	21 days after publication	30 days after publication	35 days after publication	45 days after publication	60 days after publication	90 days after publication
May 3	May 18	May 24	Jun 2	Jun 7	Jun 17	Jul 2	Aug 2
May 4	May 19	May 25	Jun 3	Jun 8	Jun 18	Jul 6	Aug 2
May 5	May 20	May 26	Jun 4	Jun 9	Jun 21	Jul 6	Aug 3
May 6	May 21	May 27	Jun 7	Jun 10	Jun 21	Jul 6	Aug 4
May 7	May 24	May 28	Jun 7	Jun 11	Jun 21	Jul 6	Aug 5
May 10	May 25	Jun 1	Jun 9	Jun 14	Jun 24	Jul 9	Aug 9
May 11	May 26	Jun 1	Jun 10	Jun 15	Jun 25	Jul 12	Aug 9
May 12	May 27	Jun 2	Jun 11	Jun 16	Jun 28	Jul 12	Aug 10
May 13	May 28	Jun 3	Jun 14	Jun 17	Jun 28	Jul 12	Aug 11
May 14	Jun 1	Jun 4	Jun 14	Jun 18	Jun 28	Jul 13	Aug 12
May 17	Jun 1	Jun 7	Jun 16	Jun 21	Jul 1	Jul 16	Aug 16
May 18	Jun 2	Jun 8	Jun 17	Jun 22	Jul 2	Jul 19	Aug 16
May 19	Jun 3	Jun 9	Jun 18	Jun 23	Jul 6	Jul 19	Aug 17
May 20	Jun 4	Jun 10	Jun 21	Jun 24	Jul 6	Jul 19	Aug 18
May 21	Jun 7	Jun 11	Jun 21	Jun 25	Jul 6	Jul 20	Aug 19
May 24	Jun 8	Jun 14	Jun 23	Jun 28	Jul 8	Jul 23	Aug 23
May 25	Jun 9	Jun 15	Jun 24	Jun 29	Jul 9	Jul 26	Aug 23
May 26	Jun 10	Jun 16	Jun 25	Jun 30	Jul 12	Jul 26	Aug 24
May 27	Jun 11	Jun 17	Jun 28	Jul 1	Jul 12	Jul 26	Aug 25
May 28	Jun 14	Jun 18	Jun 28	Jul 2	Jul 12	Jul 27	Aug 26